

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WILLIAM DAMON AVERY,

Case No. 11-CV-408

Plaintiff,

Milwaukee, Wisconsin

vs.

June 1, 2015

CITY OF MILWAUKEE, et.al.,

Defendants.

VOLUME 1
TRANSCRIPT OF TRIAL
BEFORE THE **HONORABLE RUDOLPH T. RANDA,**
UNITED STATES DISTRICT JUDGE, AND A JURY

A P P E A R A N C E S

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REPORTED BY:

HEIDI J. TRAPP
Federal Official Court Reporter
310, U.S. Courthouse
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1 TRANSCRIPT OF PROCEEDINGS

2 THE CLERK: Case Number 11-CV-408, William Damon Avery
3 vs. The City of Milwaukee, Detective Gilbert Hernandez,
4 Detective Daniel Phillips, Detective Katherine Hein, Detective
5 Timothy Heier, Detective Kevin Armbruster, Detective Erik
6 Gulbrandson, and Detective James DeValkenaere. Called for a
7 jury trial. May I have the appearances, please. First for the
8 Plaintiff.

9 MS. HOFT: Thank you. Good morning, Your Honor.
10 Janine Hoft, H-O-F-T, on behalf of the Plaintiff.

11 THE COURT: Good morning.

12 MR. STAINTHORP: Good morning, Judge. John
13 Stainthorp, S-T-A-I-N-T-H-O-R-P, also on behalf of the
14 Plaintiff.

15 THE COURT: Okay. Good morning.

16 MR. ELSION: Good morning, Judge. Ben Elson,
17 E-L-S-O-N, for the Plaintiff.

18 THE COURT: Good morning.

19 THE CLERK: And for the Defendants?

20 MR. SMOKOWICZ: For the Defendants, Assistant City
21 Attorney Jan Smokowicz. Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. YUAN: Good morning, Your Honor. Assistant City
24 Attorney Jennie Yuan also appearing for the Defendants.

25 THE COURT: Good morning. The case is here for a jury

1 trial, and the Court is prepared to proceed. I believe counsels
2 have a question or something to take up before we bring the jury
3 in? Is that correct?

4 MS. HOFT: Not for the Plaintiff, Your Honor. We're
5 ready.

6 MR. STAINTHORP: Actually yes, Judge. I'm sorry,
7 Judge. John Stainthorp. On behalf of the Plaintiff, Judge, we
8 have indicated to the Defendants that we do not intend to
9 proceed against one of the Defendants, that being Detective
10 Gulbrandson. And I believe that we and the Defendants are going
11 to enter into a stipulation to dismiss Officer Gulbrandson with
12 prejudice.

13 THE COURT: Is that correct, Mr. Smokowicz?

14 MR. SMOKOWICZ: That is my understanding, Your Honor.

15 THE COURT: Okay. The Court will proceed under that
16 anticipated stipulation, and we will proceed against the
17 remaining Defendants. Anything else?

18 MR. STAINTHORP: Just one thing on that matter, Judge.
19 That stipulation to dismiss is without costs to either side.

20 THE COURT: Okay. With prejudice, without costs to
21 either side.

22 MR. STAINTHORP: Yes.

23 THE COURT: All right. That will be a written
24 stipulation submitted to the Court?

25 MR. STAINTHORP: Yes.

1 THE COURT: Okay.

2 MR. SMOKOWICZ: We will do that, Your Honor.

3 THE COURT: All right. Then we're ready for the voir
4 dire?

5 MR. SMOKOWICZ: One other matter, Your Honor. I have
6 advised the Plaintiff's counsel of this as well this morning.
7 All of the Defendant Officers are present except -- with the
8 exception of Detective Hernandez. Detective Hernandez, as I
9 understand it, had a medical issue yesterday while cutting the
10 grass. It's my understanding he was hospitalized overnight for
11 observation and there is testing that is expected to be
12 performed today. I cannot advise the Court of what, if any,
13 issues there may be as a result of that at this point.

14 THE COURT: Well, I suppose we can proceed. Not
15 suppose. We can proceed. Was Hernandez going to testify?

16 MR. SMOKOWICZ: Not today, Your Honor. But he will
17 testify probably at least twice in this case. Once in the
18 Plaintiff's case, as I understand, and once in our case.

19 THE COURT: Well, we'll proceed. Let's play this by
20 ear. As soon as he's available, we'll have him in and he can
21 testify in the Plaintiff's case, and then the defense case.

22 MR. SMOKOWICZ: I just wanted to advise the Court of
23 that so there is no surprise in the event that it is more
24 serious.

25 THE COURT: Okay. Well, during the voir dire we will

1 obviously mention, as I say, the Defendant. And we'll introduce
2 the Defendants to the jury, because the Court will obviously
3 inquire as to whether or not anybody knows any of the parties
4 involved in the case. The lawyers and the participants.
5 Witnesses and Defendants and the Plaintiff. So I'll explain at
6 that point, unless there's an objection, that Defendant
7 Hernandez is unavailable because he's -- well, he's just
8 unavailable for say a justifiable reason at this point?

9 MR. SMOKOWICZ: I think that's fine from our
10 perspective, Your Honor. I don't think that we need to go into
11 any of the details one way or the other.

12 THE COURT: Okay. Anything else before we bring the
13 jury over?

14 MR. SMOKOWICZ: Judge, the other thing that we did
15 submit to the Court on Friday, I believe, is a proposed
16 stipulation and order to dismiss all of the claims under State
17 law.

18 THE COURT: Right. Those were 5 and 6. And the Court
19 has received that, and so that will be dismissed. Anything
20 else?

21 MR. SMOKOWICZ: Not from the Defendants, Your Honor.

22 THE COURT: Okay. We'll have the bailiff bring the
23 jury over, and we'll start the voir dire process. In the
24 meantime, the Court will take a short break while that's being
25 done.

1 (Whereupon a recess was called by the Court. Upon
2 conclusion of the recess, the proceedings continued with a voir
3 dire selection of the jury panel. Upon conclusion of voir dire,
4 the proceedings continued as follows:)

5 THE COURT: Ladies and gentlemen, for those of you who
6 have been selected, as I indicated we're going to start out with
7 the opening statements of the attorneys. But before we do that,
8 we're going to allow the attorneys some time to set things up.
9 But we also want to familiarize you with the jury room that you
10 will be reporting to each and every time you leave the courtroom
11 and come back. Do not go back to the jury assembly room. We
12 have a jury room now where you can put your personal things in.
13 And there are bathrooms and other minimal amenities there that
14 you can take advantage of and you can leave your personal
15 affairs and it will be very, very secure back there also.

16 So we're going to take a break. And please follow the
17 Bailiff, and we'll have you back here for the opening statements
18 of the attorneys.

19 (Whereupon the jury was excused at 10:42 a.m.)

20 THE COURT: Okay. Do the opening statements?

21 MS. HOFT: Yes, Your Honor.

22 THE COURT: How much time? 15 minutes?

23 MS. HOFT: That's what I was thinking, Your Honor.

THE COURT: 15? Okay. All right.

25 MS. HOFT: Your Honor, one issue on the opening. We

1 have a demonstrative evidence that I'd like to use in opening.
2 It was provided to the other side, and it's an Exhibit in the
3 Exhibit book. It is -- there's a group Exhibit 4, and I was
4 just going to be using the map for 4-A.

5 THE COURT: Any objection to that? Use of that map,
6 Mr. Smokowicz?

7 MR. SMOKOWICZ: I am assuming that someone is going to
8 be able to support this as evidence here. But assuming that to
9 be the case, I don't have an objection, Your Honor.

10 THE COURT: Well --

11 MR. SMOKOWICZ: This is a map that relates to the
12 location of various individuals tied to Walter Ellis. While I
13 know that the D.N.A. expert will tie Mr. Ellis to certain
14 people, I'm not sure that the D.N.A. -- or the expert is going
15 to have any notion about addresses.

16 THE COURT: That the D.N.A. what?

17 THE WITNESS: The D.N.A. expert, Miss Lankford, or
18 whoever they're calling from -- they're calling someone from the
19 State. I'm assuming that that person will be familiar with who
20 the -- who people were connected to in terms of D.N.A. and
21 Walter Ellis, but I'm not certain that that person will have any
22 notion about addresses.

23 THE COURT: So the objection is that these may not
24 have occurred at these addresses?

25 MR. SMOKOWICZ: Well, no. My objection is they may

1 not be supported -- this may not get into evidence. I don't
2 know --

3 THE COURT: Well, then, isn't that the downside of the
4 Plaintiff then to be quickly pointed out that what they have
5 offered is not sustained by the evidence. But it does have some
6 value as far as placing these people, so the Court will allow
7 it.

8 MR. SMOKOWICZ: All right.

9 MS. HOFT: Thank you, Your Honor.

10 THE COURT: Anything else? Okay. We'll take 15,
11 then.

12 (Whereupon a recess was called by the Court. Upon
13 conclusion of the recess, the proceedings continued as follows:)

14 MR. SMOKOWICZ: Your Honor, it appears that some
15 members of Mr. Avery's family are here present in court.
16 They -- some of those individuals may have been listed as
17 witnesses. The Court may recall that the Plaintiff himself
18 requested in motions in limine number 4 to bar all non-party
19 witnesses from the trial. Obviously the children, as the Court
20 will recall, have been dismissed as parties. If the
21 Plaintiff -- even if the Plaintiff himself were not interested
22 in this motion, we would obviously want to have witnesses
23 sequestered.

24 MR. STAINTHORP: Judge, if any party makes a motion,
25 it's granted. So --

1 THE COURT: Yeah, which is fine. There's a
2 sequestration order that was not objected to, so yeah, if
3 they're going to be a witness -- what about opening statements?

4 MR. SMOKOWICZ: I believe they shouldn't be here for
5 opening statements.

6 THE COURT: Okay.

7 MS. HOFT: And it's the Plaintiff's position that they
8 should be here. Opening and -- opening is not evidence in this
9 matter, and that any possible witnesses could be present for the
10 opening statement.

11 THE COURT: I usually allow opening statements for the
12 -- well, yeah. The Court will allow it for opening statements,
13 but not for the trial testimony.

14 MR. SMOKOWICZ: All right, Your Honor.

15 THE COURT: Anything else?

16 MR. SMOKOWICZ: No. That's it, Your Honor.

17 THE COURT: Okay.

18 (Whereupon the jury was returned to the courtroom at
19 11:12 a.m. and was duly sworn.)

20 THE COURT: As indicated, ladies and gentlemen, we're
21 going to start out with the opening statements of the attorneys.
22 And then, of course, we'll take a break for lunch after that.
23 But remember, the opening statements are not evidence. They are
24 an opportunity for the attorneys to familiarize you with what
25 they think the evidence is going to show. Miss Hoft, if you're

1 ready, you may proceed.

2 MS. HOFT: Thank you, Your Honor. Good morning again.

3 Police are to serve and protect you, not to set up and frame you
4 for murder. This case is about the Defendant Detectives -- who
5 are no longer in the courtroom -- framing William Avery, sending
6 him to prison with a 40 year sentence for a murder he did not
7 commit.

8 As I said, my name is Janine Hoft and I, along with my
9 law partners, John Stainthorp and Ben Elson -- we represent
10 Mr. William Avery. And this is Mr. Avery's case. He's bringing
11 this case to you, and opening statements are our opportunity, I
12 think as the Judge told you, to give you a preview and an
13 overview of what we expect the evidence to show.

14 You saw 5 of the Milwaukee Police Department
15 Detectives who are 5 of the 6 Defendants in this case who are
16 responsible for William being wrongfully convicted of murder.
17 Our civil system of justice includes the right to a jury trial.
18 To have people like you, each and every one of you, to determine
19 justice and compensation should you find a violation of our
20 Constitutional rights.

21 This case is not for the faint of heart. It involves
22 gruesome details of murder. Murders. And an ongoing nightmare
23 for William Avery as the Defendant Detectives fabricated
24 evidence to falsely brand him a murderer. We thank you for
25 being here, each and every one of you. We thank you for

1 considering the evidence in this important case.

2 The context of this story begins and ends with a man
3 named Walter Ellis. Walter Ellis -- he's not a party in this
4 case. He was dubbed the North Side Strangler. He eluded Police
5 for more than 20 years, trolling the north side of Milwaukee for
6 those 20-plus years, and murdering at least 10 women. Preying
7 on them in an area of drugs and prostitution. Most he strangled
8 and left to die in vacant houses or garages.

9 Debra Harris in October of 1986. Tanya Miller, Irene
10 Smith, Carron Denise Kilpatrick, Florence McCormick, Sheila
11 Farrior, Jessica Payne, Joyce Mims. Maryetta Griffin, who is
12 the victim that you will hear the most about in this case. And
13 Quithreaun Stokes.

14 Deanna Lankford, a forensic scientist from Texas, will
15 tell you that D.N.A. evidence found on each of these victims
16 pointed to Walter Ellis, the North Side Strangler. Indeed,
17 Walter Ellis was charged and convicted of 7 of these murders,
18 and he has since died in prison.

19 The evidence will show that the ninth victim of Walter
20 Ellis was a woman by the name of Maryetta Griffin. Her body was
21 found partially clad in an abandoned garage at 3032 North 7th
22 Street on February 17th, 1998. Miss Griffin had been strangled
23 to death, and it appeared she had been sexually assaulted.
24 Evidence was recovered from her vaginal area, her mouth, and
25 under her fingernails. The Milwaukee Journal Sentinel, the

1 local newspaper here, published a story about Miss Griffin's
2 death and decried the multiple other unsolved similar murders
3 that had occurred on the north side of Milwaukee. The Police,
4 however, were resistant to making any kind of connection. The
5 Police, though, began to question people in the area, and those
6 involved in drugs and prostitution on the north side of
7 Milwaukee. Maryetta Griffin was reported to have purchased
8 drugs in the area.

9 Now, at this time in 1998 William Avery was in a bad
10 situation. He struggled with many issues, including abusing
11 substances from a young -- very young age. His life had not
12 been easy. His father died before he was a teenager. His
13 mother struggled with drugs. At 22 years of age he was shot in
14 the back of the head.

15 Now it's 1998. He had dropped out of high school. He
16 was 26 years of age. He made a horrible decision. He agreed to
17 help his cousin sell drugs out of a house on North Palmer
18 Street. The evidence will show that William was convicted of
19 this drug offense, he served his time, and that is not what this
20 case is about.

21 Five weeks after Maryetta Griffin's body was found,
22 the Police left a card at the house where William was staying.
23 And so William called the Police, made an appointment to go in
24 voluntarily to the Police station the next morning, without any
25 further prompting, and that morning he went down to the Police

1 station to talk to the Defendant Detectives James DeValkenaere,
2 Daniel Phillips, Kathy Hein, and Gilbert Hernandez. Although he
3 did not know it, he was about to begin living a nightmare.

4 You will hear the testimony of a Police expert, Dennis
5 Waller. He will tell you how a homicide investigation should be
6 conducted. That such an investigation is a search for the
7 truth. That evidence must be reliable and cannot be created or
8 falsified. That these Defendant Detectives who were here this
9 morning, 5 out of 6 of them on trial today, did not follow those
10 rules.

11 After William had voluntarily gone down to the Police
12 station, over the next several days -- this was March 23rd,
13 1998. Over the next several days the Defendants Detectives
14 DeValkenaere, Phillips, Hein, and Hernandez locked William away.
15 Interrogated him. He repeatedly denied any involvement in Miss
16 Griffin's murder. He consistently maintained that he did not
17 kill her. The Defendant Detectives asked him the same questions
18 over and over again for these days.

19 They at first suggested maybe he didn't remember.
20 That maybe he didn't mean to kill her. They became more
21 aggressive. William asked for a lawyer, but was told it doesn't
22 work that way. One of the Defendant Detectives pushed him,
23 poked him in the chest, and shoved him against a wall. Another
24 made him stand for hours. Tapped him in the face and flicked a
25 lighter in his face, threatening to burn him. They wanted to

1 clear this murder case in the worst way. That was foremost in
2 their mind.

3 So they gave up talking to William. They stopped and
4 simply wrote false reports. Falsey claiming and fabricating
5 that William had confessed to this murder in those reports. If
6 William wouldn't make up statements incriminating himself, they
7 would just set him up and say he did. The reports falsely
8 claimed that William said he was responsible. And that they had
9 engaged in oral sex. Remember, the Police knew that Maryetta
10 Griffin's -- evidence had been recovered from her mouth. They
11 wrote false reports indicating that Williams said he strangled
12 her, and asked his cousin to move the body. Because the
13 evidence will show that where the body -- where the Police knew
14 the body was found was a mile away from where they knew William
15 was at the time.

16 The evidence will show that the Defendants made a
17 number of major mistakes in their attempt to frame William for
18 murder. They had no evidence against him. No evidence was ever
19 found in the vehicle they claim he used to move the body. Of
20 course, his cousin denied having anything to do with this. And
21 William, back in 1998, in about August, scientists provided
22 information that William was excluded from contributing to any
23 evidence found on Miss Griffin's body, including the D.N.A. or
24 serology, as they called it before, in her mouth, vagina, or
25 under her fingernails.

1 So they were not able to set William up at that time
2 and charge him with murder. So he began serving his time on the
3 drug offense. However, at this time a Milwaukee Journal
4 Sentinel newspaper article again was published. Identified
5 William, and also published the Defendants' false claims that
6 William had confessed. This was in the newspaper back in 1998.
7 That William implicated himself in Miss Griffin's murder.

8 Within months William, from his prison cell,
9 specifically identified the misconduct of these first four
10 Defendant Detectives and their defamation of him in a Notice of
11 Claim. What's called a Notice of Claim that was filed in
12 November of 1998 with the Attorney General for the State of
13 Wisconsin. But Defendants maintained their false reports. They
14 stuck to their concocted story, and these reports that contained
15 these incriminating statements, and sought to continue their
16 lies and continue to work to successfully frame William for
17 murder. But they were in no hurry, because William was serving
18 his time on the drug offense.

19 In the meantime, no further physical evidence came to
20 light linking William to the murder. In fact, no physical
21 evidence would ever link William to Miss Griffin's murder. And
22 as Miss Lankford will testify, the D.N.A. evidence will
23 implicate and point to serial killer Walter Ellis. And that it
24 was Walter Ellis's semen found in her mouth. Miss Lankford
25 works for an independent lab in Texas. She does not know

1 William. She does not know any of the Defendants.

2 The campaign to frame William consisted only of
3 Defendants' false claims that he implicated himself. Thus, how
4 did the Defendants build a case against him? To continue the
5 house of cards that was built on these fabricated statements
6 that William Avery indicated himself? Well, they decided they
7 would say he made incriminating statements to others. And not
8 just anyone. But three jailhouse informants said that William
9 also made incriminating statements to them while they were in
10 prison together. Now, isn't that convenient? William, of
11 course, unequivocally and repeatedly denies that he made any
12 incriminating statements. As how could he incriminate himself
13 in something he did not do?

14 As Williams' nightmare continued, two additional
15 Defendant Detectives got involved with the original four.
16 Detectives Armbruster and Heier. And they, along with Hein --
17 or Spano, as she's known now -- and Hernandez interviewed
18 these -- interviewed, and re-interviewed, and rehearsed the
19 testimony of these three jailhouse informants.

20 Within weeks of Williams' release from prison after
21 serving his time on the drug offense, he was charged with this 7
22 year old murder while meeting with his Probation Officer. He
23 was then convicted and sentenced to 40 years based on the
24 defamatory, false, incriminating statements in Defendant
25 Detectives' 1998 reports, and what was supposedly said to these

1 three jailhouse informants.

2 Police expert Dennis Waller will explain the problems
3 with relying on jailhouse informant testimony by any credible
4 law enforcement official. You will, in fact, hear live in this
5 courtroom from two of these informants. They will tell you not
6 only did William never make any incriminating statements to
7 them, but their testimony that helped wrongfully convict William
8 of murder was not accurate. That their testimony was
9 manipulated, rehearsed, and reviewed by the Defendant
10 Detectives. And that they testified under duress, and that they
11 are painfully sorry for their part in assisting the Defendants
12 in framing William for murder.

13 The third informant, a man by the name of Antron Kent,
14 you will hear his testimony by way of a deposition. Mr. Kent is
15 taking the Fifth Amendment. He's refusing to answer any
16 questions about what he testified to at William's trial so as
17 not to incriminate himself. Because if he tells the truth about
18 what he lied about on the stand, he fears he will be prosecuted
19 for perjury.

20 While beginning to serve his 40 year sentence for the
21 murder of Maryetta Griffin, William of course maintained his
22 innocence and himself wrote to the prosecutor's office begging
23 that additional D.N.A. testing be done in the Maryetta Griffin
24 case, believing -- and the man's belief system is amazing --
25 believing that somehow the truth would come out that he is not a

1 murderer, and he did not murder Maryetta Griffin.

2 Finally, the evidence from Miss Griffin's body is
3 unequivocally connected to Walter Ellis, the North Side
4 Strangler, and William is released from prison in May of 2010.
5 William served 6 years in prison, from 2004 to 2010, for a crime
6 he did not commit. He was branded a murderer for many more
7 years. In prison he had no opportunity to better himself or
8 live as we do in free society. He was a grown man, but he was
9 told when and what to eat, when and where to go to sleep, when
10 to get up. He was locked away in a cell. William had served
11 time before on the drug case, but now he was a convicted
12 murderer. In 2012 William petitioned the State of Wisconsin for
13 wrongful imprisonment of an innocent person. The Board found
14 that there was clear and convincing evidence that William Avery
15 was innocent of the crime for which he was convicted.

16 William may be different than you. He has suffered a
17 unique nightmare. But he is trying to make a decent life for
18 himself now. In the 5 years since he was released after serving
19 6 years of this 40 year sentence for murder, William graduated
20 from the Milwaukee Area Technical College with a degree in
21 carpentry. He has reconnected with his 5 children who are all
22 now in their twenties, and is working to repair and nurture
23 those relationships. You will hear from some of his kids who
24 support their Dad and know how he was affected by the Defendant
25 Detectives' successful efforts to set up and frame him for

1 murder. He now has two grandsons. He has stayed out of
2 trouble, stayed away from drugs, supported by his religious
3 faith, and is trying to support himself by taking carpentry and
4 home improvement jobs.

5 I appreciate your attention. And in conclusion the
6 evidence will show that William brings claims under the United
7 States Constitution that he was wrongfully convicted of this
8 heinous murder because the Defendant Detectives violated his due
9 process right to a fair trial. There is nothing so fundamental
10 in our criminal justice system than that those who are supposed
11 to uphold the law may not deliberately fabricate evidence,
12 create false statements, and frame an individual for a crime
13 they did not commit. Only you, the 9 of you, can stop the
14 maligning and smearing of William Avery. After you have
15 considered all the evidence, do not allow the Defendant
16 Detectives to get away with their set-up.

17 MR. SMOKOWICZ: Your Honor, we've gone into argument
18 now. We're -- I'm going to object. This is argument, not
19 opening statement.

20 THE COURT: Well, arguments should be as to what the
21 facts should show, so --

22 MS. HOFT: And after you've considered all the
23 evidence, all the facts that come in in this case, return a
24 verdict for the Plaintiff and award him substantial damages to
25 compensate him for this nightmare. Thank you.

1 THE COURT: Mr. Smokowicz.

2 MR. SMOKOWICZ: Thank you, Your Honor. Good morning
3 again, ladies and gentlemen of the jury. My name is Jan
4 Smokowicz. I am an Assistant City Attorney for the City of
5 Milwaukee. I and Jenny Yuan of our office have the pleasure of
6 representing the City and the Defendant Officers who you saw
7 this morning, except for Defendant Detective Hernandez. They
8 obviously are still Officers with the exception of 1 or 2 --
9 actually, I should say one works for the City, but not as a
10 Detective. And the other is retired. In any event, they are
11 not here because they're attending to their duties.

12 This case does not begin with any investigation of
13 Walter Ellis, someone that the evidence will show there was not
14 any evidence about in the course of this investigation until
15 many years after. Until after -- in fact, until 2009, 2010,
16 when D.N.A. evidence was linking him to various individuals.
17 Nor does this case actually begin with the questioning of
18 William Avery.

19 And, in fact, it begins sadly with the murder of
20 Maryetta Griffin. Her body was found on February 17th of 1998.
21 We believe the evidence will show that an Officer Kenneth Cecil
22 was dispatched to that location in the 3000 block of North 7th
23 to check for a body found in a garage. And he indeed found a
24 black female there in a dirty garage, only wearing a letterman's
25 sweater. Nothing more. She was at that point in a state of

1 rigor. Her legs, in fact, were in the air. And it appeared to
2 the Officers who responded that she had been placed there by
3 someone.

4 Detective Barbian-Gayan, who I believe you will hear
5 from in our case, was sent there and arrived -- or was sent
6 there around 11:30 in the morning on the 17th of February. The
7 scene was secured. The body was there. And as I indicated,
8 also, in her opinion, it is likely that that body had been
9 placed there. There was no sign of a struggle in the garage.
10 Miss Griffin's feet were not dirty. The garage was very filthy,
11 on the other hand. The Medical Examiner pronounced Miss Griffin
12 dead at 12:15 on the 17th of February. And the woman was
13 identified at that time.

14 You will only hear in this testimony about these
15 Detectives -- a very small slice of this investigation. Their
16 role that you will hear about in this case doesn't begin until
17 about a month after this homicide. That investigation had led
18 the Officers, or led Police to understand that Miss Griffin had
19 been in a drug house the night before on February 16th, at 2474
20 North Palmer Street. And there, in fact, was at least one
21 witness, if not more, who indicated that Griffin was there with
22 that person. She was at that time a prostitute and a drug
23 addict. That drug house was operated, as you may know or you
24 may have guessed or inferred from what you've heard a little bit
25 this morning, by two men. Cousins. One, Lorenzo Frost. The

1 other, Mr. Avery.

2 Avery, about a month later, about a month after the
3 homicide, because of his connection, Police wanted to speak to
4 him, and he comes to the Police Department voluntarily. After
5 he learns that they want to question him about it. About a
6 homicide. He is questioned initially by two Detectives.
7 Detective De Valkenaere and Detective Phillips on March 23rd.
8 We believe the evidence will show that that began at about
9 11:30 -- pardon me, in the morning on that day.

10 There is a report of that interview. That report is
11 typewritten. That report is included in an extensive homicide
12 file. That entire file was turned over to the prosecutor, and
13 that entire file is made available by the prosecutor to the
14 defense lawyer for Mr. Avery. That report is not signed by
15 Mr. Avery. It's not a statement by him. It's just a report of
16 what he told Detectives DeValkenaere and Phillips. That
17 Mr. Avery admits to them that Griffin was at that drug house.
18 And in their report he is reported as having admitted having
19 oral sex. That is, Miss Griffin performing oral sex upon
20 Mr. Avery. Most importantly that report, which is provided to
21 the District Attorney and to the defense, reports that Mr. Avery
22 denied killing Miss Griffin. The questioning lasted until 7
23 o'clock that evening, but there was a break during that time for
24 a lie detector test. And that break took about --

25 MS. HOFT: Objection, Your Honor. The evidence will

1 not show what Mr. Smokowicz is now arguing. And this was
2 subject to a motion in limine.

3 THE COURT: Well, then it should be excluded.

4 MR. SMOKOWICZ: There was a break taken for a
5 different purpose other than questioning Mr. Avery during that
6 first day. For 3 to 4 hours. Mr. Avery was held on open
7 warrants as a result of his coming into the Police Department
8 that were unrelated to anything involving Miss Griffin. The
9 next day, on March 24th, the next day -- after the evening,
10 after the night's rest, Detective Phillips and Detective
11 Hernandez questioned Mr. Avery. You will not hear anything more
12 about Detective DeValkenaere being involved in any kind of
13 activity in this case.

14 As a result of that questioning, Detective Hernandez
15 sat down and wrote out a statement. You will hear evidence that
16 what he wrote is what Mr. Avery told him. You will hear
17 evidence that before that was written out, there was a portion
18 that he was read his Miranda rights. And that Mr. Avery's
19 signature appears there. You will hear evidence that the rest
20 of the statement, as I indicated, is what Avery told Hernandez
21 and Phillips. At the end of that statement, it is not signed.
22 There is no reference to sex in that statement. There is a
23 statement by Mr. -- or attributed to Mr. Avery that he on that
24 night, on February 16th, or in the early morning hours of
25 February 17th, grabbed and fought with Maryetta Griffin while

1 she was at the drug house. There is a statement attributed to
2 him that he simply, quote, doesn't remember what happened, close
3 quote. But that Frost called and that he told Frost to get
4 over, and that he said, quote, I think I killed this bitch,
5 close quote. In his statement it is not indicated -- in fact,
6 you will hear testimony that he was asked, how did he do it?
7 And that Mr. Avery indicated he didn't know how. She might have
8 been killed but that he, quote, said I'm responsible. I just
9 don't remember how, close quote.

10 That interrogation, that questioning, lasted from 10
11 o'clock in the morning until 12:30. That's it.
12 Hour-and-a-half. Or two-and-a-half hours, I'm sorry. My math.
13 Later the same day he is questioned again by Detectives
14 Hernandez and now Detective Spano. Then her name was Hein.
15 That lasted from 5:30 in the evening until 2:30 the following
16 morning. Mr. Avery refuses to sign any statement there that's
17 written out for him. He admits to running the drug house. He
18 admits that he worked for Frost. The report indicates that
19 Griffin was there several times before her death, and that she
20 was there on the evening of the 16th. This report again
21 reflects oral sex by Griffin on Avery. But the report does not
22 -- and in fact it unequivocally says -- that Mr. Avery denies
23 killing Griffin.

24 Again, all three of these reports, inconsistent in
25 their statements about what happened, are all given to the

1 prosecutor. All available for the defense when Mr. Avery is
2 charged with a homicide. Given that evidence and certain others
3 as you heard already this morning, in March 1998 there was a
4 drug charge -- drug house charge issued against Mr. Avery. He
5 was convicted and he was imprisoned for a number of years.

6 Years go by and this case cannot be solved. Is not
7 solved. And as matter of fact, the next thing you will hear is
8 that 3 years later, 3 years later, in March of 2001, Detective
9 Heier is contacted by an attorney. And that the attorney tells
10 Detective Heier that his client has information about a
11 homicide. Detective Heier is a homicide Detective. That
12 attorney's client was a man named Keith Randolph. And that --
13 and you will hear that Detective Heier met with Randolph and his
14 attorney initially. That the attorney left after a short period
15 of time, and the attorney actually left the room, left his
16 client alone with a Detective, and that Randolph recounted that
17 Avery had made a statement to him. Randolph, it turns out, is a
18 friend of the family. Of the Averys. He was a pallbearer for
19 Avery's mother. This is in the report, and this is in the
20 statement. It was made available to everybody. It's not
21 hidden. That Randolph says yes, I read an article about this.
22 But he says in July of 1998 -- not only that, he says he also
23 saw Mr. Avery's statement. That's in the report, too. That's
24 not hidden from anybody. Randolph says that Avery admitted
25 choking Miss Griffin. Now, Avery -- pardon me, Randolph said

1 that Avery told him not that he had help from Frost, but that he
2 had help from a different man, Little "C". And that Little "C"
3 and Avery dispose of the body at 9th and Burleigh. Not on North
4 7th Street.

5 Still nothing happens with this man. Another year
6 goes by. July of 2002. And now, although it's been
7 characterized as Officers looking for -- trying to frame or make
8 a case, instead it's actually a call from a prison in Oklahoma
9 that Detective Armbruster takes out of the blue. Just simply
10 because he's available. The caller initially wants to remain
11 anonymous, but it turns out -- we learn later -- it's Antron
12 Kent. And this caller is saying hey, William Avery is here in
13 prison with me in Oklahoma, and he's confessing to choking a
14 woman.

15 There are several calls. This report is documented.
16 This call is documented. There are several calls where there's
17 really nothing added to that. And he eventually agrees to be
18 identified as Mr. Kent. And he says -- there's another call
19 that is reported. And this report is written up and provided
20 again to everybody. That hey, there's another witness, by the
21 way. Jeffrey Kimbrough. He overheard that statement that Avery
22 made to me. So Detective Armbruster is actually leaving the
23 Homicide Unit at that point. He's going to be transferred out.
24 But nonetheless, he has enough time on his assignment to go to
25 Oklahoma, after the approval of the District Attorney's Office,

1 with Detective Heier in August of 2002 to interview three
2 people. Kent, Kimbrough, and Avery. And they -- that is Kent
3 and Kimbrough, recount a conversation with Avery in prison that
4 Kimbrough overhears. And in which Avery says he choked a woman,
5 who he identifies sufficiently so that it is connected to
6 Maryetta Griffin. And that Frost, not Little "C", helped dump
7 the body. And that Avery believed that she was dead. And that
8 this is connected to a dope house.

9 As I indicated to you, the evidence will be that those
10 Detectives also go speak to Mr. Avery, who is in prison in
11 Oklahoma. Who essentially says after awhile I'm not telling you
12 anything. You want to talk to me? I'm going to go back to
13 Wisconsin when I'm done with this. Maybe I'll talk to you then.

14 More than a year after that passes. October of 2013.
15 Because of the passage in time you will hear Detectives Spano
16 and Hernandez interview Kent and Kimbrough to find out whether
17 they still -- they're in prison -- are willing to testify
18 against Avery. No promises are made. You will hear from the
19 Detectives nothing was promised to them. No coercion was
20 applied. They did not feed any facts to these individuals about
21 this statement. And both of them are still willing to testify.

22 Almost a year goes by again. In September of 2004,
23 early September, Detectives Gulbrandson and Heier interview
24 Kent. And Kent indicates that he's willing to continue to
25 cooperate. And they file a report to that, and they file a

1 report that says oh, by the way, he has another detail. That
2 the body was left in an area -- in a particular area, and that
3 the -- for a reason they thought that would allow them not to be
4 connected to the crime. And that the F.B.I. was investigating
5 at that time. Avery is out of prison at that point. On
6 September 7th, a Criminal Complaint is signed by the prosecutor
7 and by Detective Heier, and Mr. Avery is arrested on
8 September 21st.

9 Gulbrandson and Heier go and speak to him after he's
10 arrested, and they file a statement. A report. Which says I'm
11 not going to talk to you. I want to speak to my lawyer. And
12 that's reported, and that's not hidden. Not kept from anybody.
13 This entire file is brought to the prosecutor, and that entire
14 file includes the one D.N.A. report that you heard from, that
15 time frame of August of 1998. That's not made unavailable. And
16 that does exclude Mr. Avery from the oral swab taken from
17 Maryetta Griffin after her death.

18 Ultimately there is no credible evidence that shows
19 that these stories were fabricated by the Detectives. These
20 individuals contacted the Police. They contacted Police for
21 their own purposes. For their own motivation. On their own
22 terms. The Detectives -- there's no evidence of any motive
23 there. They didn't know Mr. Avery. They had no reason to focus
24 on him, as opposed to Lorenzo Frost, for example. And
25 everything -- all of the warts, all of the good, all of the bad,

1 all of the pluses, all of the minuses, were provided to the
2 prosecutor, available to the defense, and available to use in a
3 fair trial on the homicide charge. There is nothing in any of
4 that material connecting Walter Ellis. Nobody knows about
5 Walter Ellis until years after, unfortunately, when D.N.A.
6 science advances. And I believe you will hear that. That's the
7 advance in D.N.A. science, and it's the ability to run tests on
8 various individuals who are required to submit samples, that lo
9 and behold, Walter Ellis is finally connected to this matter.

10 And much of what you will hear from Miss Lankford, for
11 example -- all of it, first of all, depends on the tests --
12 almost all of it relies upon tests that are done long after this
13 homicide, and long after the investigation. And, in fact, after
14 the trial.

15 Lastly, as to the expert Mr. Waller, you will hear
16 that his last work in law enforcement was as Chief of Police in
17 Ripon in 1987. And that he's been a hired expert since then.
18 The last time he was certified as an instructor of law in
19 Wisconsin, in law enforcement, was 1985.

20 Ultimately the claims here are that Mr. Avery had a
21 group of individual Detectives that for some reason framed him.
22 The evidence does not support that. Thank you very much.

23 THE COURT: All right. Ladies and gentlemen, we're
24 going to take a break for lunch now. You've heard the opening
25 statements. After lunch we'll start the offering of evidence

1 and the Plaintiff will present its first witness. Now, we'll
2 have you back here at 1 o'clock. Please don't discuss the case
3 among yourselves, or with anyone. Only after all the evidence
4 is in, one. And two, if you see someone connected with the
5 case, why, you can acknowledge them, but don't carry on any
6 conversation. So we'll see you back here after 1 o'clock. Have
7 a good lunch, okay?

8 (Whereupon the jury was excused at 11:54 a.m.)

9 THE COURT: Okay. 1 o'clock.

10 MR. STAINTHORP: Judge, I think there's one matter
11 that we wanted to raise before the break.

12 THE COURT: Sure.

13 MR. STAINTHORP: There was a motion in limine in this
14 case, which was to exclude any mention of a polygraph test. And
15 you made a very clear ruling that that was excluded. And it's
16 very upsetting to us and mystifying why, in an opening
17 statement, not something that just happens off the spur of the
18 moment, but a prepared opening statement, there would be a
19 reference in Mr. Smokowicz's opening to the polygraph. And, of
20 course, Your Honor did sustain the objection at that point and
21 told him to move on. But it's very distressing to us that there
22 would be such a blatant ignoring of your ruling.

23 MR. SMOKOWICZ: Your Honor, may I?

24 THE COURT: Of course.

25 MR. SMOKOWICZ: I'm reading the Court's order from

1 January 20th. On motion in limine number 11, it bars any
2 reference to any alleged results, findings, or conclusions
3 regarding Plaintiff taking a polygraph examination in 1998,
4 including that Plaintiff voluntarily submitted to the polygraph
5 examination. Accordingly, the testimony of polygrapher Robert
6 Simons is barred, and Simons' polygraph record may not be used
7 as an exhibit.

8 I was not going to make any statement there as to any
9 results. I did not indicate that he had volunteered to take it
10 or not. I simply wanted to -- and I think the jury has a right
11 to understand here that 3 of the 7 hours that day were involved
12 in the examination. Otherwise it leads them to the mistaken and
13 inappropriate thought that these Officers interrogated him for 7
14 hours. And so I recognize, Your Honor, that I was at the edge
15 of the Court's order. If the Court feels I went over, I
16 apologize. I did not do so intentionally. That's why I stopped
17 where I was. And we didn't get any further into it. However, I
18 do think the jury is entitled to know that there was an
19 examination. I do think they should be instructed that they
20 should not take any inference from the fact that an examination
21 occurred.

22 THE COURT: Well, it technically is within the bounds
23 of the Court's order. And the Court's view is that, one, the
24 polygraph examination could have gone either way. One. Two, it
25 could have been voluntary or involuntary. All of that is

1 subject to interpretation of those facts. Can be subject to
2 interpretation either supporting one side or the other. So the
3 Court's ruling that it not be discussed any further, and that
4 its exclusion by the Court on opening statements, that it did
5 not conform to what was going to be presented as evidence was
6 accurate in the sense that the Court's order during the course
7 of the trial will preclude the offering of the delay as --
8 offering of delay as a result of the polygraph test. But
9 certainly the evidence can be put into the record that the delay
10 was not related to any interrogation techniques.

11 So I don't think Mr. Smokowicz's violation was a
12 direct -- such as it is -- was a violation, if we want to look
13 at it that way. In other words, improper motives I don't think
14 can be attached to it, so the Court is not disturbed by it.
15 Coupled with the fact that an interpretation could be made both
16 ways, either supporting, or not, the case of the Plaintiff. Or
17 the defense, either way. And so it's not that significant, in
18 the Court's view. But in any event, it's related to what's
19 going to come forward.

20 I don't think the defense should be precluded from
21 stating that there was this hiatus that was unrelated to any
22 interrogation techniques. However you want -- not related to
23 any interrogation techniques. The polygraph, as I understand
24 it, and in the Court's experience, takes time to set it up,
25 blah, blah, blah. I mean, it's not unusual. But I don't think

1 it can be considered an interrogation technique.

2 MR. STAINTHORP: Okay. But Judge, am I correct in
3 understanding that there should be no mention going forward of
4 polygraph? We're not going to make an argument that there was
5 an undue amount of time taken up in this interrogation.

6 Certainly --

7 THE COURT: Well, it sounded like it in the opening
8 statements. That he was put under heavy duress and pressure and
9 that there was this constant poking with the fire. Lights. I
10 mean, it may come out in the evidence, but I think defense has a
11 right to dispel that if they've got evidence to that effect.
12 And the fact that a polygraph examination is done by a
13 polygrapher and that it's not the cops in an interrogation room
14 shaking the client down, or shaking the Defendant or suspect
15 down. The defense should have opportunity to testify that the
16 interrogation was stopped for other procedures. Along those
17 lines. But the polygraph is not going to be mentioned.

18 MR. STAINTHORP: Fine.

19 MR. SMOKOWICZ: Other procedures? Is that the term?

20 THE COURT: Yeah. Other procedures unrelated to the
21 Detectives' interrogation that was conducted earlier. Because a
22 polygrapher is someone separate. Even though he may be
23 connected to the Department, he's not exactly a part of the
24 process of the interrogation techniques that we're talking about
25 here with investigating Officers pumping the Defendant or

1 potential Defendant -- or in this case the Plaintiff -- for
2 information. So it won't be mentioned, but it can be mentioned
3 that this hiatus occurred unrelated to the interviewing that was
4 going on previously and then subsequently.

5 MR. STAINTHORP: Okay.

6 THE COURT: I think it handles the situation.

7 MR. SMOKOWICZ: Thank you, Your Honor.

8 MR. STAINTHORP: Okay. Thank you.

9 THE COURT: 1 o'clock.

10 (Whereupon a recess was called by the Court. Upon
11 conclusion of the recess, the proceedings continued as follows:)

12 MS. HOFT: Your Honor, prior to our first witness
13 testifying, we would be seeking here to move into evidence
14 Plaintiff's Exhibits 1 and 2 pursuant to Federal Rule of Civil
15 Procedure 44, proving an official record. Exhibit 1 is the
16 Walter Ellis Criminal Complaint, a certified copy of that. And
17 Exhibit 2 is a certified copy of the Walter Ellis conviction.

18 THE COURT: Okay. Any objection to that?

19 MR. SMOKOWICZ: Object on relevance grounds. Other
20 than that --

21 THE COURT: The Court will receive it.

22 (Whereupon the jury was returned to the courtroom at
23 1:13 p.m.)

24 MS. HOFT: Your Honor, at this time we would move into
25 evidence Plaintiff's Exhibit 1, which is a certified copy of the

1 Criminal Complaint against Walter Ellis.

2 THE COURT: All right. The Court will receive them.

3 **DEANNA LANKFORD**, called as a witness, having been
4 first duly sworn, on oath testified as follows:

5 THE CLERK: Please state your full name and spell your
6 last name for the record.

7 THE WITNESS: Deanna Lankford.

8 MS. HOFT: I'm sorry. Exhibit 2. And should I set
9 them on the table? Exhibit 2 is a certified copy of the Walter
10 Ellis conviction.

11 THE COURT: That will be received.

12 MR. STAINTHORP: Plaintiff calls Deanna Lankford.

13 THE CLERK: And now, ma'am, please state your full
14 name and spell your last name for the record.

15 THE WITNESS: My name is Deanna Lankford,
16 L-A-N-K-F-O-R-D.

17 **DIRECT EXAMINATION**

18 **BY MR. STAINTHORP:**

19 Q. Good afternoon, Ms. Lankford. How are you?

20 A. I'm well. And you?

21 Q. Okay. And can you tell the jury what you do for a living?

22 A. Sure. I'm an Associate Laboratory Director with Cellmark
23 Forensics in Dallas, Texas. And we're a private D.N.A.
24 laboratory. We test items of evidence. Biological substances
25 of items of evidence -- from items of evidence and crime scenes,

1 and we compare that evidence to victims, witnesses, suspects.

2 Q. And Ms. Lankford, could you summarize for the jury your
3 education and especially your education and training with
4 respect to D.N.A. analysis?

5 A. I obtained my Bachelor's of Science in Medical Technology
6 from the Middle Tennessee State University. I then went on and
7 obtained a Certificate in Medical Technology from the St. Thomas
8 School of Medical Technology. I am actually now in the last
9 semester of my Master's program in Forensic Science, D.N.A. and
10 serology. Decided to wait many years to get that. But I should
11 have that in the next couple of months.

12 As far as my training goes? That's something that is
13 ongoing every year. We have to obtain a certain number of
14 continuing education hours in order to maintain our
15 accreditation in our laboratory and also to stay proficient in
16 the testing which we perform.

17 As far as each process, we are required to go through
18 rigorous training with each procedure that we perform, and that
19 we have to observe -- be observed, perform competency tests
20 before we're ever able to work on our own.

21 Q. And can you tell us and tell the jury when you obtained
22 your -- the degrees and qualifications that you referred to?

23 A. Yes. Sorry. That was in 1996.

24 Q. And since 1996 have you been employed in the area of D.N.A.
25 analysis and reporting results with respect to D.N.A.?

1 A. I have been. I've been with my current company in two
2 different locations for the past -- going on 19 years. So in
3 1996.

4 Q. Okay. And with respect to your training and education, have
5 you, since you graduated and obtained your degrees, continued
6 your study of the science of D.N.A.?

7 A. I have.

8 Q. Okay. And since that time has the science with respect to
9 D.N.A. changed?

10 A. It has changed a lot since -- well, even since before I was
11 in the field. But when I started in 1996 the technology was, as
12 we call now, archaic. But it has become more and more advanced
13 throughout the years.

14 Q. And can you explain to the members of the jury the outlines
15 of the science of D.N.A.? What is D.N.A.? Why are we
16 interested in it? In the forensic field?

17 A. Sure. D.N.A. is the basic building block of all living
18 things. We each have our very own unique D.N.A. profile that
19 we're born with, and we die with that exact same D.N.A. profile.
20 We inherit half of our D.N.A. from our mothers, and half from
21 our biological fathers. It's what gives you your hair color,
22 your eye color, your skin color. If you have an identical twin,
23 you will share the same D.N.A. profile. Other than that, we're
24 all extremely unique, and that is a very helpful tool when using
25 forensic D.N.A. analysis.

1 Q. When you examine the D.N.A. from a cell in one part of the
2 body -- for instance, if you examine D.N.A. from the person's
3 skin on their nose, is that the same as D.N.A. from another part
4 of the body, such as semen?

5 A. Yes. Our D.N.A. is found in the nucleus of all nucleated
6 cells in our bodies. So that the same D.N.A. that you would
7 find in your skin cells, or your hair root, or sperm cells, or
8 blood cells, would be the same D.N.A. profile.

9 Q. And I believe you mentioned this, but just again, does your
10 D.N.A. change in any manner over your lifetime?

11 A. It does not.

12 Q. And so would it be fair to say, then, that the D.N.A. that
13 you're born with you die with, correct?

14 A. Correct.

15 Q. And the D.N.A. from one part of your body is completely
16 identical to the D.N.A. from another part of your body?

17 A. That is correct.

18 Q. And has this been established through multiple and reliable
19 scientific studies?

20 A. Yes.

21 Q. And is there any doubt in the field about these principles
22 that you've just laid out in terms of D.N.A. staying the same
23 throughout your life, and D.N.A. being the same in every cell of
24 your body?

25 A. No.

1 Q. Okay. Now, with respect to determining D.N.A. from an
2 evidentiary sample, how do you as a D.N.A. scientist go about
3 doing that? What do you in fact do in practice?

4 A. We are -- our ultimate goal is to locate biological
5 evidence. So that biological evidence can be in the form of a
6 blood stain or semen stain. It can be from the rim of this cup.
7 If I've been drinking out of this water cup, we can find my skin
8 cells or saliva around that. So our goal is to identify a
9 biological substance from a pertinent item of evidence. We
10 extract the D.N.A. from the nucleus of those cells, whatever
11 they may be. Whether it's blood cells or sperm cells. We break
12 open the D.N.A., we extract it, we break open the nucleus and we
13 extract the D.N.A., and we generate a D.N.A. profile.

14 Q. And when you say you -- you extract the D.N.A. profile, what
15 does that mean?

16 A. What that means is we extract the D.N.A. by breaking open
17 the nucleus and actually isolating the D.N.A. We quantitate how
18 much D.N.A. is actually present. We put it into a thermocycler,
19 which is what you utilize to perform P.C.R. And P.C.R. just
20 means that you're making more of a copy.

21 Q. Okay. And for the jury can you say what P.C.R. -- what
22 that -- that's initials, obviously?

23 A. That is an abbreviation for the polymerase chain reaction.
24 So our body is constantly doing this all the time. We make more
25 cells, more skin cells to cover up the skin cells that we lose

1 throughout the day just brushing on items. Or if we get a
2 horrible sunburn, we need to replace those cells as well.

3 Q. And with respect to the use of D.N.A. in the forensic
4 context, so when you're trying to figure something out or figure
5 out the identity of some evidentiary material, are there certain
6 parts of the D.N.A. that are then analyzed to provide values?

7 A. Yes. We actually target specific markers or genes or loci.
8 They're all -- those are multiple names for just specific areas
9 on your D.N.A. strand. We look at ones that do not code for
10 hair color or eye color. We look at specific ones that code for
11 nothing. They're just the differences. That everyone has a
12 different number of repeats in that particular area.

13 Q. And the loci that you're referring to on the current D.N.A.
14 technology, how many loci do you look at, typically?

15 A. In my lab we look at anywhere from 13 to 15. There are
16 newer kits out that you can look at up to maybe 20 or 23. But
17 the basic core loci would be 13. The F.B.I. came out with a
18 specific 13 loci that they want laboratories to utilize in order
19 to be able to upload those into the national database.

20 Q. And as a result of when you obtain values of at these 13
21 different loci, what does that tell you about the evidentiary
22 materials that you're analyzing? Well, let me strike that.
23 When you get these results, the 13 different loci, are -- are
24 you then able to evaluate the likelihood of a particular person
25 or a particular object being the source of that material?

1 A. When we obtain a D.N.A. profile from an evidentiary item,
2 there's really a couple things we can figure out at that point.
3 One is we do use a sex marker so we can see whether it's a male
4 or a female. The other thing we can do is verify if it's a
5 single source profile, or a mixture of more than one individual.
6 But let's just say we do have a single source profile and it is
7 male. We would then compare that to a suspect, or a victim, or
8 a witness. And if we do have a match, we would issue some sort
9 of statistics to define just how rare that D.N.A. profile is.

10 Q. So with respect to these different loci, if you are using a
11 13 loci testing system, you obtain results for all 13 loci, and
12 then you have a sample to which you're comparing it to, which is
13 identical at all 13 loci, what can you say typically about that
14 result?

15 A. We can say that they're consistent with one another. We can
16 say they match at all loci. And if the statistics are high
17 enough, then we can state identity. That, scientifically
18 speaking, that D.N.A. profile came from that individual, barring
19 that individual having an identical twin.

20 Q. Okay. So essentially you can state to 100 percent
21 certainty, in certain cases, if you have sufficient information,
22 that this evidentiary material came from this person or that
23 person's identical twin. Is that fair to say?

24 A. With the exception of putting the 100 percent in there. We
25 do state identity -- that because of the identical twin, and the

1 fact that we don't actually know if they have an identical twin
2 -- they may tell us they do or don't, but we can't say.

3 Q. Now, if you have results of certain loci, and those results
4 are inconsistent with D.N.A. evidentiary materials that come
5 from a certain person, what can you say about that result?

6 A. We would say that that individual is excluded as being a
7 contributor to that D.N.A. profile.

8 Q. So for instance, if there was a -- some evidentiary material
9 that matched 12 of the 13 loci to somebody, but didn't match,
10 and you had a result at the 13th loci, what would you be able to
11 say in that situation?

12 A. With a match at 12 markers, and then the thirteenth one was
13 an exclusion, I would probably recommend doing just a little
14 additional testing, because chances are they're very related.

15 Q. Okay. So the chances are that the people -- that -- that if
16 there's 12 of 13, that then the person who you're testing might
17 be related to the source of the evidentiary material but was not
18 in fact the source?

19 A. Right.

20 Q. Him or herself, correct?

21 A. Correct.

22 Q. So if you don't match in a single loci, and your results are
23 reliable, you're ruled out?

24 A. That's correct.

25 Q. Okay. Now, when you -- when you examine evidentiary

1 material -- so if you examine a biological sample, let's say of
2 semen, in the course of your work would you -- you would
3 customarily compare that to different evidence, is that true?

4 A. If we performed D.N.A. analysis on, say, a vaginal swab from
5 a rape, and we obtained a D.N.A. profile, we would want to
6 compare that to reference standards from victims, suspect.
7 Elimination standards. Or husband, boyfriend.

8 Q. Okay. So one of the things you would compare it to is
9 another person, correct?

10 A. Correct.

11 Q. And does it also happen on occasion that you don't -- that
12 you don't have another person, but perhaps you have another
13 crime from which you have derived D.N.A. from the evidence?

14 A. That has happened, yes.

15 Q. And in that -- so in that case you're examining D.N.A. from
16 one unsolved crime to D.N.A. from another unsolved crime, is
17 that correct?

18 A. Correct.

19 Q. And if, in fact, the D.N.A. matches up, then that gives you
20 some important information, is that correct?

21 A. That's correct. If that happens in our laboratory we notify
22 the agency that submitted us the evidence. The cases.

23 Q. And -- because in that case you would -- you would be able
24 to conclude that evidentiary biological material from one case
25 is identical to evidentiary biological material from another

1 case?

2 A. Correct.

3 Q. And in certain instances, then, a reasonable inference from
4 that would be if there was a crime involved in both cases, that
5 the same person had been involved in both crimes?

6 A. Right.

7 Q. Okay. And I think you also mentioned earlier that the
8 F.B.I. maintains a system -- or maintains records of D.N.A.
9 results, is that correct?

10 A. That's correct.

11 Q. And what's the name of that?

12 A. It's called CODIS.

13 Q. And is it your understanding that States also maintain a
14 CODIS system?

15 A. They do. They maintain a State level. They have different
16 requirements for the upload of those samples.

17 Q. And in the CODIS system, what records would be maintained in
18 that system? For instance, would there be records maintained of
19 a specific individual whose D.N.A. had been obtained?

20 A. They do. They do maintain the D.N.A. profile in the
21 national system.

22 Q. And that would be a D.N.A. profile of a specific person? Or
23 several specific people?

24 A. Yes. They -- they have names associated with those. They
25 also have not just individual offenders in the database, but

1 unknown profiles that they would obtain from a crime where there
2 is no suspect. But they do obtain a probative profile. They
3 will upload that into the database as well.

4 Q. Okay. So in fact if you obtain D.N.A. results from analysis
5 of a specific piece of evidentiary material, and if you're
6 using -- or if an agency is using the CODIS system, you can
7 attempt to match it to -- or compare it to individuals within
8 CODIS, correct?

9 A. Yes.

10 Q. And you can also attempt to compare it to unsolved crimes
11 that are maintained within CODIS?

12 A. That's correct.

13 Q. All right. Now, you said you work for Cellmark, is that
14 correct?

15 A. Yeah. We've gone through a couple of name changes. Today
16 we're Cellmark Forensics.

17 Q. Oh, Cellmark Forensics. I'm sorry. And you are a salaried
18 employee?

19 A. I am.

20 Q. Of Cellmark Forensics?

21 A. Yes.

22 Q. Okay. And do you have any financial interest in the outcome
23 of this lawsuit?

24 A. No.

25 Q. Okay. So you get paid the same, whatever the result is, is

1 that fair to say?

2 A. Yes.

3 Q. Okay. With respect to this case -- so the case involving
4 Mr. Avery, what materials did you review?

5 A. I looked at numerous D.N.A. reports that were issued by the
6 State of Wisconsin Crime Laboratory. I also looked at some
7 memos generated by the Wisconsin State Crime Laboratory.

8 Q. And are these the type of materials that experts such as
9 yourself in the field customarily rely on?

10 A. Yes, they are.

11 Q. And the materials that you reviewed from the Wisconsin State
12 Crime Lab, and the memos from the Crime Lab, are those generally
13 regarded as reliable information in the field?

14 A. Yes.

15 Q. And do State Crime Labs have rules and procedures that
16 govern their operation?

17 A. Yes, they do.

18 Q. And is it a fact that with respect to D.N.A. analysis, is it
19 important to follow strictly the procedures in order to obtain
20 reliable results?

21 A. Yes.

22 Q. Okay. And do you have any reason to doubt any of the
23 materials that you relied on in this case to reach your
24 conclusions?

25 A. No.

1 Q. So if we go to the materials that you've actually relied on
2 in this case -- and I want to start with a memorandum from the
3 26th of October of 2009. Do you see -- do you have that one?

4 A. Yes.

5 Q. In front of you?

6 A. Yes.

7 Q. You do? And can you tell the members of the jury what that
8 is? What this document is?

9 A. Sure. It is a memo to the Milwaukee Police Department from
10 the D.N.A. Data Bank Unit of the Wisconsin State Crime Lab. It
11 is a note that is -- or memo that is linking case-to-case hits.

12 Q. Okay. And when you're saying case-to-case hits, what is
13 that?

14 A. What that means is originally there were crimes that were
15 worked that -- or evidence from crimes that were processed using
16 D.N.A. analysis. There were probative D.N.A. profiles obtained.
17 They were entered into the database, and now at this point in
18 this memo 9 of those cases have hit to one another. So there's
19 a similar -- or actually the same D.N.A. profile in all 9 of
20 those cases.

21 Q. All right. And so this memo is from 2009, correct?
22 October, 2009?

23 A. Yes.

24 Q. And this is linking 9 separate cases or D.N.A. recovered in
25 9 separate cases all to the same person. Is that correct?

1 A. That's correct.

2 Q. So if we go through these 9 cases, and looking at the
3 memorandum -- so the first case listed in the memorandum -- and
4 there's actually two memorandums the same day, correct? Do you
5 see that?

6 A. Yes.

7 Q. And -- but essentially the same subject matter linking 9
8 cases together?

9 A. Correct.

10 Q. All right. And we'll go through the order that they have
11 listed them here, even though they're not in -- I don't believe
12 they're in order in terms of dates. The first case -- so now
13 we're looking at the second memorandum on October the 26th.
14 What is the first case that is listed here?

15 A. The first case listed is the victim Irene Smith. Also known
16 as Sheila Jones.

17 Q. And what's the offense date of that case?

18 A. November 27th, 1992.

19 Q. And this memo notes what the D.N.A. was recovered from, is
20 that correct?

21 A. Yes.

22 Q. All right. And what does it note?

23 A. There were oral swabs from the victim's evidence collection
24 kit.

25 Q. And next case is what?

1 A. Carron Denise Kilpatrick.

2 Q. And the date of?

3 A. October 13th, 1994.

4 Q. And what was the evidentiary material that was analyzed in
5 that case?

6 A. This was a vaginal smear and vaginal swabs.

7 Q. And each of these cases notes that this case -- well, the
8 first two note that they're both homicides, is that correct?

9 A. Yes.

10 Q. And they're both stabbings?

11 A. The first two are homicide stabbings.

12 Q. The next case that's listed here, which is that case?

13 A. It's a homicide strangulation case. Victim Florence
14 McCormick. Offense date was April 24th, 1995.

15 Q. And where was that evidentiary material recovered from?

16 A. From Ms. McCormick's sexual assault kit.

17 Q. The next case?

18 A. Also a homicide, strangulation case. Victim Sheila Farrior.
19 Offense date June 27th, 1995. And this D.N.A. came from the
20 vaginal swabs from Ms. Farrior.

21 Q. And the next case is?

22 A. Another homicide, strangulation. Victim Debra Harris.
23 Offense date October 10th, 1986. Again, the evidence D.N.A. was
24 from vaginal swabs from Ms. Harris.

25 Q. And the next case?

1 A. Also a homicide, strangulation case. Victim's name is Tanya
2 Miller. Offense date was October 11th, 1986. Evidence also
3 recovered from the vaginal swabs from Ms. Miller.

4 Q. And the next case?

5 A. A homicide, strangulation case. Victim Quithreaun Stokes.
6 Offense date April 27th, 2007. And the evidence noted was a
7 stain from a pepper spray container.

8 Q. And the case after that?

9 A. It's a homicide, exsanguination case. Victim's name Jessica
10 Payne. The offense date is August 30th, 1995. And the D.N.A.
11 came from the vaginal swabs from Ms. Payne.

12 Q. And the final case as noted in this October, 2009,
13 memorandum?

14 A. Homicide, strangulation case. Victim Joyce Mims. Offense
15 date June 20th, 1997. And the D.N.A. profile came from the
16 vaginal swabs from Ms. Mims.

17 Q. And so all of those cases, pursuant to this memorandum, are
18 linked in terms of the same D.N.A. being recovered from the
19 various evidentiary materials that you've described, is that
20 correct?

21 A. That's correct.

22 Q. Then in addition to this memorandum, did you -- were you
23 provided with the reports from the Wisconsin Department of
24 Justice, State Crime Lab, in relation to each of those cases?

25 A. I did receive those.

1 Q. Okay. And with respect to those materials, let's start with
2 the first one from the memo, I believe, which is Irene Smith.
3 Yes. Irene Smith. Who is also known as Sheila Jones. With
4 respect to that report, the date on that report, do you see it?
5 September the 14th of 2009?

6 A. Yes.

7 Q. And with respect to that report, if you look at the second
8 page, do you see that that -- there's -- right at the bottom
9 that there's D.N.A. results recovered from oral swabs?

10 A. Yes.

11 Q. And was the D.N.A. recovered from the oral swabs in that
12 case compared to the D.N.A. from another individual?

13 A. Yes. It was compared to Walter Ellis.

14 Q. Okay. And it notes that there's a D.N.A. profile developed
15 from Walter Ellis's buccal swab. Do you see that?

16 A. Yes.

17 Q. And what is a buccal swab?

18 A. A buccal swab is basically a Q-Tip. Generally just has a
19 swab on one end, and you can collect D.N.A. from the inside
20 cheek of your mouth by just swirling it around on each side of
21 your cheek. And you will collect epithelial cells from your
22 mouth.

23 Q. And is a buccal swab a reliable method of obtaining a
24 person's D.N.A.?

25 A. Yes. It's the same as collecting blood from your arm. It's

1 just less invasive.

2 Q. Okay. And is that a type of method that is customarily used
3 in your field?

4 A. Yes.

5 Q. To obtain D.N.A.?

6 A. Yes.

7 Q. Okay. So based on the Crime Lab report dated September
8 the 14th of 2009, in the Irene Smith homicide, what conclusions
9 can be drawn and were drawn by the State Crime Lab in terms of
10 the source of the D.N.A. recovered from the sperm fraction of
11 the oral swabs?

12 A. Barring an identical twin, the source of the D.N.A. from the
13 oral swabs was Walter Ellis.

14 Q. And did the Crime Lab in its report arrive at the
15 determination of how likely it was that this D.N.A. from the
16 oral swab could be from anyone other than Walter Ellis?

17 A. Yes. They make a statement in the report that the
18 probability of randomly selecting an unrelated individual with
19 an STR profile consistent with a foreign male profile discerned
20 from the semen on Irene Smith's oral swab is at least as rare as
21 one in 18 billion individuals.

22 Q. And -- okay. And how many -- what's the population of the
23 entire world at this point?

24 A. We're at 6 or 7 billion.

25 Q. So in terms of this conclusion, that's one in 18 billion,

1 scientifically what does that mean?

2 A. Well, that's 2 or 3 times the world population. So
3 scientifically speaking, that D.N.A. profile -- the source of
4 that D.N.A. profile would be Walter Ellis.

5 Q. Okay. And with respect to that result in that case, when
6 the report refers to the sperm fraction from the oral swab, what
7 does that mean?

8 A. What that means is when we expect -- or serological
9 methods -- if we expect there's going to be a mixed D.N.A.
10 profile -- when I say mixed, it's a mixture of sperm and skin
11 cells. So when you take an oral swab, or a vaginal swab, or
12 pretty much any swab from the female cavity, you're naturally
13 going to be collecting her skin cells. But you're also going to
14 be collecting those sperm cells. So we have a D.N.A. extraction
15 method in which we separate the two based on the characteristics
16 of epithelial cells, which are light and fluffy, and you've got
17 your sperm cells, which are dense and heavy and tough.

18 So we perform the D.N.A. extraction. We're able to
19 separate the cells based on type and characteristics, and we end
20 up with two tubes of D.N.A., one of which is the sperm cells,
21 and the other which is the skin cells. At least that's the
22 goal. Sometimes they're still over one way or another, but
23 that's the goal.

24 Q. So obviously, then, if you're testing the D.N.A. of the
25 sperm cells, you know it doesn't come from the victim if the

1 victim is a woman?

2 A. That's correct.

3 Q. And then with respect to this particular case, was there
4 also an attempt to identify what's called a Y-STR profile?

5 A. Yes.

6 Q. Can you tell the members of the jury what a Y-STR profile
7 is?

8 A. A Y-STR profile is a D.N.A. profile that we obtain from a
9 male. So women have two "X" chromosomes, and men have an "X"
10 and a "Y". So anytime you generate a Y-STR -- a "Y" profile, it
11 must come from a male. So -- and it's a more sensitive test.
12 In cases where you have so much female D.N.A., and you may only
13 have a little bit of male D.N.A., we'll use the Y-STR test
14 because it will specifically go after the male D.N.A. and
15 completely ignore any female D.N.A. that's left behind that may
16 dilute out the male D.N.A.

17 Q. And while the Y-STR is more sensitive, is it less
18 discriminating?

19 A. It's much less discriminating, because you as a male will
20 have the same Y-STR profile as your father, as your grandfather,
21 as your brothers, as your paternal uncle. So it follows the
22 whole male -- I'm sorry, the whole paternal side of the male's
23 family.

24 Q. Okay. So would it be fair to say that with respect to the
25 Irene Smith case, the D.N.A. from the sperm fraction of the oral

1 swabs comes from Walter Ellis?

2 A. With regard to the autosomal STR testing, absolutely.

3 Q. Now, if we go to the next case, the Carron Kilpatrick, do
4 you also have a report dated September the 8th of 2009?

5 A. I do.

6 Q. Okay. And in that case did the Crime Lab obtain -- and I'm
7 sorry -- September the 8th, 2009. And then on the same case
8 September the 15th of 2009?

9 A. That's correct.

10 Q. All right. And with respect to that case, in particular the
11 September the 15th, 2009, report, did the Wisconsin Department
12 of Justice Crime Lab reach any conclusions about the source of
13 evidentiary materials in that case?

14 A. Yes, they did.

15 Q. And first of all, what was the evidentiary materials that
16 was being -- were being analyzed? In particular, with respect
17 to the September 15th report? It's actually both of them, but
18 the result is more developed in the September 15th, 2009 report.

19 A. They were specifically looking at the vaginal smear pellet
20 from the victim's sexual assault kit. And then also a
21 toothbrush. Vaginal swabs.

22 Q. And with respect to the toothbrush, was it your
23 understanding that that toothbrush was something that was Walter
24 Ellis's toothbrush? Well, I will ask you to assume that it was,
25 in fact, Walter Ellis's toothbrush. I believe that's

1 established in another memorandum.

2 A. Okay.

3 Q. If you have someone's toothbrush, what can you do in terms
4 of the toothbrush to figure out D.N.A.?

5 A. Well, you can test the cellular material that's left behind
6 on a toothbrush to determine what D.N.A. profile you find from
7 it.

8 Q. Okay. So that is a way of getting a D.N.A. profile for a
9 particular person who's using that toothbrush, correct?

10 A. Yes, that's correct.

11 Q. In this case with respect to the 2009 case memo in Denise
12 Kilpatrick, the D.N.A. from the evidentiary materials recovered
13 from Denise Kilpatrick was compared to both the D.N.A. profile
14 obtained from the toothbrush, and also from a buccal swab, is
15 that correct?

16 A. Yes. The buccal swab from Walter Ellis. And then the
17 toothbrush purportedly from Walter Ellis as well. And they all
18 match.

19 Q. Okay. And if the buccal swab and the toothbrush match, that
20 would indicate to you that the toothbrush was used by Walter
21 Ellis, correct?

22 A. More than likely, yes.

23 Q. And so as a result of this report here in 2009, matching the
24 evidentiary materials recovered from the victim in this case, to
25 the D.N.A. of Walter Ellis, what can be said scientifically

1 about that match?

2 A. They stated in the report that the most reasonable
3 scientific explanation for these results is that Walter Ellis is
4 the source of the D.N.A. on the sperm fraction of the vaginal
5 smear and the toothbrush.

6 Q. In fact, if you look on Page 2 of the second memo -- so the
7 one that's on September the 15th -- they actually calculate the
8 frequency for the D.N.A., is that correct?

9 A. They do. They calculated the frequency of the D.N.A.
10 profile being rarer than one in 6 trillion individuals, which is
11 approximately 1,000 times the population of the world.

12 Q. So scientifically is it reasonable to draw the conclusion
13 that the D.N.A. from the evidentiary materials in the Denise
14 Kilpatrick case were left by Walter Ellis?

15 A. That's correct.

16 Q. If we go to the next case, Florence McCormick -- and again,
17 this is a -- there's a report June the 1st, September 16th, and
18 an additional one on March the 11th. But let's deal with the
19 earlier memorandum.

20 MR. SMOKOWICZ: Excuse me. I didn't hear a date.

21 MR. STAINTHORP: The first two are 2009, and there's a
22 final one in 2011. All on the same case.

23 MR. SMOKOWICZ: Thank you. I apologize.

24 MR. STAINTHORP:

25

1 Q. I'm addressing the 2009 report, and in particular let's just
2 pay attention to the September 16th, 2009 report. Does that
3 also compare buccal swabs from Walter Ellis to materials
4 recovered from the victim in this case, Florence McCormick?

5 A. It does. In this particular case, it was the vaginal swabs
6 and the anal swabs from Ms. McCormick.

7 Q. And what did they find in terms of the comparison of the
8 evidentiary materials from the victim to the D.N.A. of Walter
9 Ellis?

10 A. They matched.

11 Q. Okay. And again, they have a frequency of -- if you look
12 at -- on the September 16th memo, under the paragraph that says
13 results, they have a frequency determination, is that correct?

14 A. The calculated frequency of an STR profile is rarer than one
15 in 6 trillion individuals, which is 1,000 times the world -- the
16 estimated world population.

17 Q. So again, scientifically is it fair to say that you can
18 state with reasonable scientific certainty that those
19 evidentiary materials were attributed to Walter Ellis?

20 A. Yes.

21 Q. The next case is Sheila Farrior. And there's memos dated
22 June and September of 2009, is that correct?

23 A. That is correct.

24 Q. And again, these reports are comparing D.N.A. from Walter
25 Ellis to the evidentiary materials in this case, is that

1 correct?

2 A. Yes. Specifically September 21st, 2009.

3 Q. Okay. And in that -- in that particular report they're
4 comparing the Walter Ellis D.N.A. to what?

5 A. The vaginal swabs collected from Sheila Farrior.

6 Q. And what is the determination by the State of Wisconsin
7 Crime Lab with respect to that?

8 A. Says the most reasonable scientific explanation for these
9 results is that Walter Ellis is the source of the male D.N.A. on
10 the vaginal swabs. They also gave the statistical calculation,
11 frequency of the D.N.A. profile being rarer than one in 6
12 trillion individuals, which is approximately 1,000 times the
13 population of the world.

14 Q. So once again, similarly to the other cases, scientifically
15 it is -- can you state to a reasonable degree of scientific
16 certainty that Walter Ellis left that evidentiary material?

17 A. Yes.

18 Q. Going to the next case. Again, this is 2009, and the case
19 of Debra Harris. And there's memos in both June and September
20 of 2009. Was a similar type of analysis attempted in that case?

21 A. Yes, it was.

22 Q. And in that case was the evidentiary material from the
23 victim, Debra Harris, vaginal swabs?

24 A. It was.

25 Q. And what was the result of the examination by the Wisconsin

1 State Crime Lab in that case?

2 MR. SMOKOWICZ: Again, I apologize. Your Honor. I
3 didn't hear a date.

4 MR. STAINTHORP: It's June 2nd, 2009, and
5 September 15th, 2009.

6 MR. SMOKOWICZ: Thank you.

7 MR. STAINTHORP:

8 Q. So do you remember my question?

9 A. Yes, sir. The D.N.A. profile obtained from Walter Ellis
10 matched the profile obtained from the vaginal swabs of Ms.
11 Harris.

12 Q. So once more we can say that Walter Ellis is the source of
13 that D.N.A. on the vaginal swabs, correct?

14 A. Yes.

15 Q. And again, with respect to these vaginal swabs, that's the
16 sperm fraction of the vaginal swabs?

17 A. Yes.

18 Q. So the sperm fraction isolated in a similar way that you've
19 already described, is that correct?

20 A. Yes, that's correct.

21 Q. And now if we -- the next case is Tanya Miller. Do you see
22 that case?

23 A. I do.

24 Q. And again, that's in 2009. And was a similar analysis
25 attempted in that case?

1 A. Yes.

2 Q. And in that case the D.N.A. from Walter Ellis was tested
3 against the semen in the vaginal swabs, is that correct?

4 A. That is correct.

5 Q. And --

6 A. There is again a match. Walter Ellis's D.N.A. profile
7 matched the profile from the semen on the vaginal swabs for Ms.
8 Miller.

9 Q. And in that -- there's also a frequency determination in
10 that case? Do you see that?

11 A. Yes. They also said that this D.N.A. profile is rarer than
12 one in 6 trillion individuals, which is approximately 1,000
13 times the population of the world.

14 Q. Now, the next case, the next memo -- and this is from 2000
15 -- well, starts off in 2007, and then there's a 2009 -- 3 memos
16 from 2009, and one memorandum from 2010 relating to the case
17 of -- they spell it here Withreaun (phonetic) Stokes. I think
18 it's really Quithreaun Stokes. And do you see that?

19 A. I do.

20 Q. And in that case the comparison of D.N.A. -- strike that.
21 Initially there was evidentiary material that was recovered from
22 the crime scene relating to Quithreaun Stokes, is that correct?

23 A. That's correct.

24 Q. And so D.N.A. was recovered at that point, correct?

25 A. Correct.

1 Q. But at that point -- so now we're talking about 2007. Could
2 it be compared to Walter Ellis? Or is there any indication that
3 it was compared to Walter Ellis at that time?

4 A. In '07? No.

5 Q. But what happened in the Quithreaun Stokes case with respect
6 to the D.N.A. results that were obtained? And this is on the
7 fourth page of the 2007 memo.

8 A. They entered the profile into the case work index of the
9 Wisconsin D.N.A. data bank on June 13th, 2007.

10 Q. And what results were obtained?

11 A. They found that the search revealed matches between the
12 evidentiary profile from this case, and evidentiary profiles
13 from two other homicides in Milwaukee.

14 Q. And those two other homicides were?

15 A. The Jessica Payne case and the Joyce Mims case.

16 Q. And if you go back to that -- the 2009 memo, the one that we
17 started with, the one that links all the cases, those are two of
18 the cases that are then linked together in that 2009 memo, is
19 that?

20 A. Correct.

21 Q. All right. And then -- so that's in 2007. So it's not
22 linked to Walter Ellis, but it is linked to these two other
23 cases that are -- where there's unknown -- there's material from
24 unknown persons, correct?

25 A. Correct.

1 Q. And then if you go -- well, then the May, 2009, memo is
2 attempting to link the D.N.A. found from the Quithreaun Stokes
3 homicide to a number of people, is that correct?

4 A. Yes.

5 Q. And, in fact, the determination at that point is that --
6 that there's no match, correct?

7 A. Correct.

8 Q. But that there's a number of people who are similar to the
9 autosomal D.N.A. profile?

10 A. That's correct.

11 Q. And one of those is Akesha (phonetic) Ellis. Do you see
12 that?

13 A. I do.

14 Q. Okay. And then we go to 2009. So now later in the year,
15 July 2009. And then again a memo in September of 2009. By that
16 time do you see that the evidentiary material from the
17 Quithreaun Stokes case is now being compared to Walter Ellis?

18 A. Yes.

19 Q. And in particular that's the -- it's being compared to a
20 buccal swab from Mr. Ellis?

21 A. That's correct.

22 Q. And what is the determination with respect to the comparison
23 of the evidentiary material to Mr. Ellis's D.N.A.?

24 A. There were several items, and the most reasonable scientific
25 explanation for these results is that Walter Ellis is the source

1 of the D.N.A. recovered from these items.

2 Q. And one of those items that was being checked was fingernail
3 clippings, is that correct?

4 A. Yes. Left hand fingernail swabs.

5 Q. And if you look at the final page of that September, 2009
6 memo, was there a determination made applying the Y-STR analysis
7 as to whether the fingernail clippings were consistent with
8 coming from Walter Ellis?

9 A. Yes. As was the blood swab from the pepper spray container,
10 and the neck swabs.

11 Q. And in homicide cases why are fingernail scrapings in
12 particular examined?

13 A. It's with the idea that a victim is trying to defend
14 herself, and in cases she may end up scratching or clawing at
15 the assailant and will sometimes get the assailant's D.N.A.
16 under her fingernails in the way of skin or blood.

17 Q. So in the course of your work are fingernail clippings
18 something that is routinely examined to determine whether there
19 is some evidentiary material, and in particular D.N.A.
20 evidentiary material present?

21 A. Yes.

22 Q. And if, in fact, there is D.N.A. evidentiary materials
23 recovered from fingernails, that would indicate that there had
24 been some close contact between the victim and the source of the
25 D.N.A., is that correct?

1 A. More than likely, yes.

2 Q. And that certainly, as you say, could be the person
3 defending themselves?

4 A. Could be, yes.

5 Q. All right. All right. And if we go to the next case, which
6 is Joyce Mims -- and again, this is a memo dated September 15th
7 of 2009. And also then February 26th, 2011. But with respect
8 to the 2009 memorandum -- so September 15th, 2009, was there an
9 examination made of evidentiary material from the Joyce Mims
10 homicide to evidentiary material obtained from Mr. Ellis?

11 A. Yes, there was.

12 Q. And what was the determination arrived at after that
13 examination?

14 A. So the D.N.A. of Walter Ellis matched the vaginal swabs and
15 the right thigh swabs.

16 Q. And so again it would be -- scientifically it would be fair
17 to say that the -- that Walter Ellis is the source of that
18 D.N.A., is that correct?

19 A. It would be, yes.

20 Q. All right. So that those are the memos in relation to some
21 of the 9 cases that were linked in 2009. I now want -- there
22 was additional material that I provided you in relation to the
23 Maryetta Griffin case, is that right?

24 A. Yes.

25 Q. And this is a -- there's a memo dated May 11th of 2010, and

1 then June 16th, 2010. Do you see that?

2 A. I do.

3 Q. And from looking at this, there was certain materials that
4 were taken from the victim in this case, Maryetta Griffin, that
5 was analyzed in the May 11th, 2010, report. Is that correct?

6 A. That's correct.

7 Q. And what were those materials?

8 A. From her specifically? Vaginal swabs and oral swabs.

9 Q. And was that -- so this is material from the homicide
10 victim, Maryetta Griffin, correct?

11 A. Correct.

12 Q. That's now being examined or re-examined in 2010. In May of
13 2010. And was that then examined to -- compared to D.N.A.
14 materials that were obtained from various other people?

15 A. Yes.

16 Q. And the material that was -- the evidentiary material that
17 was obtained from Maryetta Griffin, that included oral swabs and
18 vaginal swabs, correct?

19 A. Yes.

20 Q. Or as related in this memo, it did. And with respect to the
21 oral swabs -- and again, there was -- there was -- a sperm
22 fraction of the vaginal swab was isolated, is that correct?

23 A. Correct.

24 Q. And again, as you said before, once you -- once you divide
25 up the D.N.A. into sperm and non-sperm, you can tell which is

1 coming from a male, and which is coming from somewhere else,
2 correct?

3 A. Correct.

4 Q. With respect to the sperm fraction of the vaginal swab, were
5 certain persons excluded as the possible source of that profile?

6 A. Yes.

7 Q. And who were those people?

8 A. The individuals that were excluded from the sperm fraction
9 of the vaginal swabs are Derrick Crawley, Samuel Hogans, Lorenzo
10 Frost, William Avery, and Walter Ellis.

11 Q. No. I think you misread that.

12 A. Oops.

13 Q. The -- if you look at the -- on Page 3, the paragraph next
14 to the bottom. So we're looking at the oral swabs.

15 A. Oh, the oral. I'm sorry. I thought you said vaginal swabs.

16 Q. Yes.

17 A. Okay. Sorry.

18 Q. So the vaginal swabs. Who was excluded as the source of the
19 sperm fraction of the oral swabs?

20 A. Excluded from the sperm fraction of the oral swabs are
21 Derrick Crawley, Samuel Hogans, Terry Bryson, Lorenzo Frost, and
22 William Avery.

23 Q. And was there also a determination made with respect to the
24 comparison with Walter Ellis in relation to the oral swabs?

25 A. Yes. The D.N.A. profile from the sperm fraction of the oral

1 swabs was consistent to the profile from Walter Ellis.

2 Q. And was there a frequency determination made with respect to
3 the likelihood of that occurring?

4 A. There was. The probability of randomly selecting an
5 unrelated individual who would have a profile consistent to this
6 evidentiary profile is at least as rare as one in 34 billion.

7 Q. And scientifically speaking, then, is it reasonable to say
8 that this sperm fraction from the oral swab was deposited by
9 Walter Ellis?

10 A. That's correct.

11 Q. And then, as you noted earlier, there was an examination of
12 the vaginal swab, correct?

13 A. Correct.

14 Q. And that was compared to the D.N.A. of, among others,
15 William Avery, correct?

16 A. That's correct.

17 Q. And what was the conclusion with respect to whether Walter
18 Avery could have been a source of the sperm fraction from the
19 vaginal swab?

20 A. William Avery was excluded.

21 Q. Okay. And, in fact, with respect to the vaginal swab there
22 was a determination that the source of the D.N.A. in the sperm
23 fraction of the vaginal swab was Terry Bryson?

24 A. That's correct.

25 Q. And other evidence will show Mr. Bryson was, in fact, the

1 boyfriend of Ms. Griffin?

2 A. Okay.

3 Q. And my understanding is Walter Ellis was excluded as the
4 source of the D.N.A. in the vaginal swab, correct?

5 A. That's correct.

6 Q. All right. But does that affect in any way the conclusion
7 that he's included -- or that the oral swab is from Walter
8 Ellis?

9 A. No.

10 Q. And again, with respect to the Y-STR testing that you've --
11 the one that's male specific, there is testing -- that's Y-STR
12 testing done at that time, is that correct?

13 A. That's correct.

14 Q. And what's the result of the Y-STR testing? And in regard
15 to the oral swab, the sperm fraction of the oral swab, in
16 relation to Walter Ellis?

17 A. The Y-STR profile from the oral swabs is consistent with
18 Walter Ellis.

19 Q. And if we go now to the -- another memo in relationship to
20 the Maryetta Griffin case, this one dated June the 16th of 2010?
21 Do you see that?

22 A. I do.

23 Q. And at that point they're testing fingernail clippings from
24 Ms. Griffin. Do you see that? Both right and left hand?

25 A. Yes.

1 Q. All right. And with respect to the right hand fingernail
2 clippings, what was determined by the Crime Lab with respect to
3 those fingernail clippings for Maryetta Griffin?

4 A. They developed from the right hand fingernail clippings -- a
5 mixture of at least three individuals. Due to the limited
6 statistical information obtained from the profile, it may be
7 used for exclusionary purposes only.

8 Q. And were certain people excluded from being the possible
9 contributors to the D.N.A. found in the fingernail scrapings?

10 A. Yes. There were four people excluded.

11 Q. And was one of those people William Avery?

12 A. Yes. He was excluded.

13 Q. And with respect to -- when -- when we say that there was
14 limited information obtained from those fingernail clippings,
15 what is that referring to?

16 A. Means that the D.N.A. profile obtained was not a strong,
17 clear profile. It was -- it was a very low level mixture.
18 They're just too hard to deconvolute. And so when they don't
19 meet particular reporting guidelines, we just put a cap on it
20 and say that no conclusions can be drawn on it. Or we can only
21 exclude.

22 Q. And so then when you have that limited amount of
23 information, you can say that certain people cannot be the
24 source of the D.N.A., correct?

25 A. Correct.

1 Q. And you can say that other people could be the source, but
2 you can't definitively say the same way that you can if you have
3 findings that -- 13 loci, or whatever loci?

4 A. That's correct.

5 Q. And did they also test the Y-STR with respect to the right
6 hand fingernail clippings?

7 A. Yes.

8 Q. And did that also exclude William Avery as a possible
9 source?

10 A. Yes, it did.

11 Q. And was Walter Ellis excluded as a possible source of the
12 Y-STR?

13 A. The presence or absence of D.N.A. from Walter Ellis in that
14 mixture could not be determined.

15 Q. Which essentially means you can't say one way or the other?

16 A. Can't say one way or the other. It's inconclusive.

17 Q. And with respect to the -- to the certainty expressed in
18 these various reports, it seems that your certainty can range
19 from absolutely this is the person; to, well, this could be the
20 person; or this person's excluded; to we just can't say one way
21 or the other. Is that fair to say?

22 A. That's correct.

23 Q. All right. And is that because as scientists you're being
24 particularly careful with respect to reporting your results?

25 A. Yes, we are.

1 Q. All right. So examining all these various reports that I
2 have now been showing you for some time, is it scientifically a
3 fact that William Avery is excluded as the source of the D.N.A.
4 in any of the homicides -- in all of the homicides, I should
5 say?

6 A. Yes. With the exception of the ones you just noted that
7 were inconclusive, and we can't say one way or the other. But
8 his D.N.A. was not found in any of these cases.

9 Q. Okay. Was there any D.N.A. results obtained from any of the
10 evidentiary materials in any of the homicides that could be
11 attributed in any scientifically reliable way to Mr. Avery?

12 A. No.

13 Q. And included in that would be the -- both the oral and the
14 vaginal swabs in the Maryetta Griffin case, is that --

15 A. Correct.

16 Q. So then scientifically it would be accurate to say that
17 Mr. Avery is absolutely excluded as being the source of the
18 D.N.A. found in both the oral and vaginal swabs, and in
19 particular the sperm fractions of those swabs, is that correct?

20 A. That is correct.

21 Q. And is it also scientifically accurate to say that Mr. Avery
22 is excluded as the possible source of the D.N.A. found in the
23 fingernail scrapings from Ms. Griffin?

24 THE COURT: I know you said yes before, so -- that was
25 the sample that was found usable only for excludable purposes.

1 THE WITNESS: Okay. So --

2 THE COURT: Mr. Avery was one of them.

3 THE WITNESS: That is correct. I'm sorry. I couldn't
4 remember if that was one of the ones that was inconclusive. I'm
5 sorry.

6 MR. STAINTHORP:

7 Q. So with respect to the fingernail scrapings that could be
8 analyzed in the Maryetta Griffin case, he's absolutely
9 scientifically excluded as the source of that D.N.A.?

10 A. That is correct. My apologies.

11 Q. Okay. And with respect to the materials that I have given
12 to you, is it fair to say that all of the those homicides and
13 all of the D.N.A. -- strike that. Is it fair to say that with
14 respect to the homicide cases that I've had you examine, there
15 is D.N.A. evidentiary material in all of those cases which link
16 to Walter Ellis?

17 A. Yes. All of them.

18 MR. STAINTHORP: All right. That's all I have, Judge.

19 THE COURT: Cross examination.

20 MS. YUAN: Yes. Thank you, Your Honor.

21 **CROSS EXAMINATION**

22 **BY MS. YUAN:**

23 Q. Good afternoon, Miss Lankford. How are you?

24 A. Good afternoon. I'm well. And you?

25 Q. I'm all right. My name is Jenny Yuan, and I'm one of the

1 attorneys for the defense in this case. And I just have a few
2 follow-up questions.

3 A. Certainly.

4 Q. I think this was established, Miss Lankford, but just so I'm
5 clear, you've been retained by the Plaintiff, correct?

6 A. My company has, yes.

7 Q. Your company has. Okay. And you didn't perform any
8 independent testing in this case, is that right?

9 A. We did no testing in our laboratory. I merely reviewed the
10 materials that had been -- or the testing that had been
11 performed by the Wisconsin Crime Laboratory.

12 Q. Wisconsin State Crime Lab?

13 A. Yes.

14 Q. Okay. Miss Lankford, you did draft a report -- or actually
15 more specifically an affidavit in support of your opinions in
16 this case. Is that correct?

17 A. I did.

18 Q. Do you have that in front of you?

19 A. I do.

20 Q. Okay. I'm going to refer you to that report. Now, I'm
21 going to refer you to paragraph 19 of that report. After
22 reviewing the State Crime Lab reports and other materials that
23 you were submitted by the Plaintiff's attorney, you concluded
24 that as early as May, 2003, there was D.N.A. evidence that
25 linked a couple different unsolved homicides, correct?

1 A. Um-hum. Yes.

2 Q. And that would be Jessica Payne, and then one other
3 homicide, correct?

4 A. Correct.

5 Q. Okay. Now, in that paragraph you indicated it's an unknown
6 D.N.A. profile that was linked, correct?

7 MR. STAINTHORP: Counsel, what page are you on?

8 MS. YUAN:

9 Q. I'm sorry, Paragraph 20 says there was unknown male D.N.A.
10 that was linked between --

11 A. Yes.

12 Q. Okay. So at that point what the reports were showing when
13 you looked at it was there was a male D.N.A. profile linked from
14 the Payne case and another homicide, but the identity of that
15 male D.N.A. was not known, correct?

16 A. Correct.

17 Q. Does that mean that that male D.N.A. was not in the State
18 crime D.N.A. database?

19 A. I don't know if it was or not.

20 Q. The identity, though, was not known in any of the reports,
21 correct?

22 A. It was not listed on the reports, correct.

23 Q. And that's in 2003, correct?

24 A. Yes.

25 Q. Okay. Moving to paragraph 23 of your report, you stated

1 there that it was another four years, then. So June 13th, 2007,
2 this same unknown male D.N.A. then was linked to -- is that 3?
3 Three different homicides?

4 A. I'm sorry, which --

5 Q. Paragraph 23? So in that paragraph you indicate that there
6 was an unknown male profile linked to the Payne case and the
7 Mims case. And then also to the Stokes case, correct?

8 A. Yes.

9 Q. Okay. So that's three unsolved homicides at that time,
10 correct?

11 A. Correct.

12 Q. But it's also still unknown as to who the identity of that
13 male D.N.A. profile was, correct?

14 A. In '07? I believe in '07 it was still unknown.

15 Q. And that's what you said. You said in your report four
16 years later on June 13th, 2007, the same unknown male D.N.A. was
17 linked, correct?

18 A. Yes.

19 Q. In fact, in your report you indicated that it wasn't until
20 -- you testified to this earlier during your direct examination
21 that it was in '09 when Mr. Ellis's name and his identity was
22 really revealed in the State Crime Lab report that you were
23 reviewing, correct?

24 A. Yes, I see that.

25 Q. Miss Lankford, do you know when Mr. Avery had his homicide

1 trial involving Maryetta Griffin?

2 A. I don't.

3 Q. If I were to represent to you that he had his homicide trial
4 in March of 2005, that would be before any information
5 concerning Walter Ellis was available to the Wisconsin State
6 Crime Lab, correct?

7 A. According to these reports, yes.

8 Q. According to the reports that you reviewed, correct?

9 A. Correct.

10 Q. That was provided to you by Mr. Avery's attorneys, correct?

11 A. Right. I was looking at the D.N.A. reports from the Crime
12 Lab, right.

13 Q. Okay. You had testified that you started D.N.A. analysis in
14 1996, is that correct?

15 A. Correct.

16 Q. And I think you also testified that the science behind
17 D.N.A. analysis has changed quite a bit since the time when you
18 started in '96?

19 A. Um-hum.

20 Q. Okay. And I'm not sure if you were aware, but the homicide
21 of Maryetta Griffin occurred in 1998. Were you aware of that?

22 A. Okay. I think I read the date a few minutes ago, but I
23 didn't remember the exact date.

24 Q. Okay. Did you review in August, 1998, a State Crime Lab
25 report concerning the D.N.A. evidence collected from Maryetta

1 Griffin?

2 A. Are you referring to one of the reports that we just went
3 through?

4 Q. No. And in fact I can provide it for you. Miss Lankford,
5 I'm showing you what's been marked as Defense Exhibit 1005. You
6 can take a look at that, please. And then if you could identify
7 that for me?

8 A. August 20th, 1998, laboratory report.

9 Q. That's a State Crime Lab report dated August 20th, 1998,
10 correct?

11 A. Right. Wisconsin Department of Justice Crime Lab.

12 Q. Okay. And did you review this report in your analysis of
13 the materials provided to you from Mr. Avery's attorneys?

14 A. We didn't review it today in trial, and I don't remember if
15 I did or not.

16 Q. That's okay. Are you able to, looking at this report, tell
17 me if the -- I understand, and I'll be honest with you, my
18 understanding of D.N.A. testing is very limited. But my
19 understanding is back in 1998 the State Crime Lab utilized the
20 RFLP testing method. And I believe that the acronym represents
21 restriction fragment length polymorphism?

22 A. That's correct.

23 Q. Okay. Are you aware if that's the type of testing that was
24 available then for D.N.A. analysis back in 1998?

25 A. Yes.

1 Q. Okay. And that's the only testing that was available for
2 D.N.A. analysis back in that time period, is that correct?

3 A. No. It was -- it wasn't the only -- it was starting to
4 phase out. I guess PCR was starting to phase in a little bit.

5 Q. You said PCR?

6 A. Um-hum.

7 Q. Yes?

8 A. Yes.

9 Q. Okay. What's used now is something called STR testing, is
10 that correct?

11 A. Correct.

12 Q. And that was not available back in 1998, is that correct?

13 A. I don't remember which particular year it came out. I would
14 need to look it up. I wouldn't want to misstate. I'm not sure.

15 Q. That's okay. Are you able to look at this Exhibit 1005
16 that's in front of you and state that -- what type of testing
17 was used on the evidentiary material gathered from Maryetta
18 Griffin?

19 A. RFLP.

20 THE COURT: What is it again?

21 THE WITNESS: RFLP.

22 THE COURT: RFLP.

23 MS. YUAN:

24 Q. So that's what was used back in 1998, is that correct?

25 A. For this test, yes.

1 Q. Okay. Can you describe, what is RFLP testing?

2 A. RFLP testing is, again, an older method where we require
3 lots and lots of D.N.A. For instance, in a blood stain you
4 would need probably a quarter sized stain. And with PCR testing
5 you don't even have to see the stain. It just requires a few
6 cells. RFLP testing was performed on an agarose gel which you
7 see a lot of on T.V. when they're showing D.N.A. And there's
8 really a banding pattern that you look at on those, as opposed
9 to the repeated bases that I mentioned earlier with PCR. So
10 you're really looking at a banding pattern.

11 Q. A banding pattern, you said? Okay. And how many -- is it
12 loci?

13 A. Loci.

14 Q. How many loci is compared under the RFLP method?

15 A. It depends on the number of probes you use. You can look at
16 many different areas. I believe back when I did it we generally
17 looked at -- generally looked at maybe four.

18 Q. Okay. And have you had a chance to review this report? I
19 notice that you may have reviewed it before. I'd like you to be
20 able to take a look at it and see what the results are.

21 A. Okay. I will need a minute. Can I mark on this?

22 Q. You may mark on that if you'd like. I have another copy for
23 the Court.

24 A. Thank you. Okay. I think I am ready to go through the
25 results section.

1 Q. Thank you very much. And I do believe it's all found on the
2 last page of that report.

3 A. Okay.

4 Q. So there was a vaginal swab conducted of Maryetta Griffin to
5 collect any evidentiary material from that area, along with the
6 oral swab, correct?

7 A. Yes.

8 Q. Okay. And according to the D.N.A. testing that was done
9 back in 1998, the testing done on the evidentiary material found
10 in the vaginal swab excluded Mr. Avery from contributing to that
11 evidentiary material, is that correct?

12 A. The vaginal swabs?

13 Q. Correct.

14 A. Yes. He was excluded.

15 Q. Okay. So Mr. Avery was excluded from contributing to any
16 D.N.A. that may have been found in Miss Griffin's vaginal area
17 back in 1998?

18 A. That's correct.

19 Q. Okay. And also looking at the oral swabs, that was also
20 tested. And any D.N.A. material found on the oral swabs was
21 tested, and Mr. Avery was also excluded as a contributor for any
22 evidentiary material found on the oral swabs, is that correct?

23 A. That's correct.

24 Q. Okay. Miss Lankford, you also perform D.N.A. testing at
25 your work, correct?

1 A. Yes.

2 Q. Okay. So when you're doing D.N.A. testing off of either an
3 oral swab or a vaginal swab, you can only test the D.N.A.
4 material -- evidentiary material that is on the swab, correct?

5 A. Correct.

6 Q. Okay. So, for example, if you were testing the evidentiary
7 material collected from an oral swab, you are not part of
8 collecting the oral swab, correct?

9 A. No. We don't do the collection.

10 Q. You do not.

11 A. No.

12 Q. You -- if you're doing that testing on an oral swab, you
13 don't know who the collectors -- what location in the oral
14 cavity the collector is swabbing, correct?

15 A. No. Not unless they list some specifics on the paperwork in
16 the sexual assault kit.

17 Q. Okay. And Miss Lankford, is there a general rule in terms
18 of how long D.N.A. -- or how about this. How long semen can
19 remain in an oral cavity in a live person?

20 A. I think it's -- it's been discussed, and there are always --
21 there are always reports going up and down with the length of
22 time.

23 Q. I've been told it was 6 hours. Is that in the ballpark at
24 all?

25 A. I have heard that one before as well. I don't know that

1 I've done enough research to actually have my own opinion, but
2 that is one of the numbers that I have read.

3 Q. Is it your opinion that semen in the oral cavity does not
4 remain there for a very long time? When I say that, I mean a 24
5 hour period of time?

6 MR. STAINTHORP: Objection, Judge. I believe the
7 witness has indicated this goes beyond her expertise.

8 THE COURT: Well, that was relative to the last one.
9 And as far as that goes, it goes to weight, not the exclusion.
10 But if she knows the answer to this one, she may give an answer.

11 THE WITNESS: I mean, I don't know how long. I don't
12 know. Six hours or 24 hours. I think there are a lot of
13 conditions in which it might stay in there longer or you can get
14 rid of it faster.

15 MS. YUAN:

16 Q. So the enzymes in the mouth. That breaks down any semen
17 that may be in the mouth, correct?

18 A. Enzymes definitely work against D.N.A. If one was, you
19 know, constantly using mouthwash or eating or drinking, you
20 know, I can see that making the sperm, or the -- go away faster.

21 Q. The only way to -- well, for example, if semen is the only
22 foreign evidentiary material that's in the oral cavity, the only
23 way to be able to test for D.N.A. is if there's still semen in
24 the mouth, correct?

25 A. I'm sorry? Repeat that question.

1 Q. I'll strike that. That was a bad question. So if an
2 individual takes a drink of water, that would speed up the
3 process in terms of getting rid of any foreign D.N.A. that may
4 be in that person's mouth?

5 A. I would say yes. Assuming there's -- the sperm is located
6 where they're drinking. You know what I mean? If it's in the
7 line of where the water is going down.

8 Q. And the same question. If a person is eating something and
9 chewing and then swallowing, that would tend to get rid of any
10 semen that may be in the mouth?

11 A. It would work against it faster as well.

12 Q. Okay. Now, do you know if Mr. Ellis -- or did you know when
13 Mr. Ellis's D.N.A. came to light for the Wisconsin State Crime
14 Lab?

15 A. I don't remember if I read it.

16 Q. Okay. In the report that you reviewed, though, and in the
17 materials provided to you by Mr. Avery's attorneys, it appears
18 from your testimony under examination that it was in 2009 when
19 Mr. Ellis's identity was revealed as unknown D.N.A. profile
20 linked to those murders that were discussed earlier, is that
21 correct?

22 A. I can double-check the reports. I don't recall if it was.
23 So 2010 -- so 2009 is the earliest so far. The earliest report
24 I see is in 2009.

25 Q. Of the materials you were provided by Mr. Avery's attorneys,

1 correct?

2 A. At least the ones I'm reviewing today. Yes.

3 Q. Okay. Can you tell from the reports that you did review
4 that the D.N.A. testing done when Mr. Ellis's D.N.A. was
5 identified as Mr. Ellis, and then linked to these other
6 homicides, was that method, the D.N.A. testing, was that the STR
7 method of testing?

8 A. Yes. With the exception of one that we reviewed today, was
9 RFLP. Well, two if we count the one that you handed me.

10 Q. That's okay. You believe all of them except maybe one or
11 two.

12 A. Yes.

13 Q. Because I understand the Maryetta Griffin test, that Exhibit
14 1005 that I handed to you, that August 1998 report was the
15 RFLP method?

16 A. Correct.

17 Q. My understanding if there is D.N.A. that was analyzed under
18 the RFLP method, that -- and the profile is unknown, unknown
19 D.N.A. profile, if later on that same D.N.A. is analyzed on the
20 STR testing method, and now that's turned into a profile into
21 the data base, you can't directly compare those two, is that
22 right?

23 A. That's correct. They have completely different looking
24 results.

25 Q. Say that again.

1 A. They have completely different -- different looking results.
2 The results look different and they can't be compared to one
3 another.

4 Q. Okay. So I know that you testified later on in reviewing
5 Wisconsin State Crime Lab reports that Ellis -- Walter Ellis's
6 D.N.A. was eventually in 2010 linked to Maryetta Griffin,
7 correct? The D.N.A. file on Maryetta Griffin?

8 A. Yes. 2010.

9 Q. Okay. And again, that was the STR testing method that
10 identified Walter Ellis's D.N.A.?

11 A. Yes.

12 Q. Okay. The fact that the D.N.A. materials found in Miss
13 Griffin's oral cavity was tested back in 1998 under the RFLP
14 method, and that was Mr. Ellis, it can be explained by the fact
15 that when you test Mr. Ellis's D.N.A. under the STR method, you
16 can't compare that. And there wouldn't be a hit in the database
17 because his D.N.A. was tested under the RFLP method back in '98?

18 A. So -- yeah, you cannot compare Walter Ellis's STR result
19 with Walter Ellis's RFLP result. They would not -- they just
20 don't read the same language.

21 Q. Completely different language, you said?

22 A. Right.

23 Q. Okay. So there wouldn't be a hit in the database once
24 Walter Ellis's D.N.A. comes into the database if he's tested
25 under the STR method?

1 A. If you have a profile in the data base that's in RFLP
2 language, and you upload a person that has the STR language and
3 they're one in the same, they would not know to hit to one
4 another. They're basically in different sections of the
5 database.

6 Q. Okay. Those are all the questions I have. Thank you.

7 A. Thank you.

8 THE COURT: Any redirect?

9 MR. STAINTHORP: Just very briefly, Judge.

10 **REDIRECT EXAMINATION**

11 **BY MR. STAINTHORP:**

12 Q. With respect to the testing that was done in 1998 -- so
13 that's the report that Ms. Yuan -- I'm sorry, Ms. Yuan gave to
14 you just now. At that point there was no comparison to
15 Mr. Ellis, correct?

16 A. That's correct.

17 Q. And then with subsequent testing of the D.N.A. that was
18 recovered from Maryetta Griffin, and in particular the testing
19 of the oral swabs, that testing was -- so now we're dealing
20 about -- with the testing in 2010. That -- the D.N.A. profile
21 that was developed from that testing was of the sperm fraction
22 of the oral swab, correct?

23 A. Yes.

24 Q. Okay. So that once you're getting a result from the sperm
25 fraction, then you know that that's coming from male sperm and

1 not some other source, such as the person's saliva or anything
2 else. Is that fair to say?

3 A. That's the goal is for that entire fraction to be sperm. It
4 doesn't mean there aren't some epithelial cells in there as
5 well, but the goal is for it to be sperm, yes.

6 Q. Okay. And do you have any reason to doubt that in this
7 particular case with respect to the 2010 testing of the sperm
8 fraction of the oral swab, that that was in fact what was
9 tested?

10 A. No.

11 Q. So in fact, then, based on those results, then, it's
12 scientifically reliable to say that was Walter Ellis's sperm in
13 Maryetta Griffin's mouth, correct?

14 A. That would be a fair statement, yes.

15 Q. And it's also fair to say scientifically that there was none
16 of William Avery's sperm in Maryetta Griffin's mouth, correct?

17 A. That's correct.

18 Q. Okay. That's all I have, Judge.

19 THE COURT: Any questions?

20 MS. YUAN: No, Your Honor. Your Honor, defense moves
21 defense Exhibit 1005 into evidence.

22 THE COURT: That's the lab report?

23 MR. STAINTHORP: No objection.

24 THE COURT: The Court will receive it. You may step
25 down, Mrs. Lankford. Thank you. You're excused, ma'am.

1 THE WITNESS: Thank you.

2 THE COURT: Additional witnesses?

3 MR. ELSON: Plaintiff calls William Avery, Judge.

4 THE COURT: Okay. That will be rather lengthy, so why
5 don't we finish off the day with Mr. Avery. And -- well, I
6 assume it is. But we'll take the afternoon break at this point,
7 ladies and gentlemen. Take a short break. Please don't discuss
8 the case. Only after all the evidence is in. We'll see you
9 back here after the afternoon break.

10 (Whereupon the jury was excused at 2:42 p.m.)

11 THE COURT: Okay. Take a short break.

12 (Whereupon a recess was called by the Court. Upon
13 conclusion of the recess, the proceedings continued as follows
14 when the jury was returned to the courtroom at 3:00 p.m.:)

15 **WILLIAM DAMON AVERY**, called as a witness, having been
16 first duly sworn, on oath testified as follows:

17 THE CLERK: State your name and spell it for the
18 record.

19 THE WITNESS: My name is William Avery.

20 W-I-L-L-I-A-M. Last name's Avery, A-V-E-R-Y.

21 **DIRECT EXAMINATION**

22 **BY MR. ELSON:**

23 Q. How old are you, William?

24 A. I'm 43.

25 Q. Are you married or single?

1 A. Single.

2 Q. Do you have any children?

3 A. Yes, I have 5 children.

4 Q. What are the names and ages of your children?

5 A. I have William Avery, Junior. He's 26. Sirena Avery, she's

6 23. Jalisa Avery, she's 21. And I have Cynthia Tyler, she's

7 23. And Nafia Avery, she's 21.

8 Q. And what is the highest level of formal education you've

9 received?

10 A. I got a carpentry diploma from M.A.T.C., Milwaukee Area

11 Technical College.

12 Q. When did you receive your carpentry diploma?

13 A. In 2012.

14 Q. And how long of a course of study did you go through to

15 receive your carpentry diploma?

16 A. Two years.

17 Q. What do you presently do for work?

18 A. Home improvement.

19 Q. Do you work for a company? Or do you own your own business?

20 A. I started my own business.

21 Q. What's the name of your business?

22 A. Avery's Home Improvement.

23 Q. And what type of home improvement jobs do you do?

24 A. Some roofing, fencing, decks, windows. To that nature.

25 Q. And how has your business been doing?

1 A. It's struggling, you know, any start -- any new business.

2 Q. When is the last time you had a home improvement job?

3 A. Probably about a week ago.

4 Q. What kind of job was it?

5 A. I was patching a roof, actually. Yes.

6 Q. From the time that you were 34 years old until you turned

7 39, where were you?

8 A. I was locked up in Waupun Correctional Facility for this

9 murder that I didn't commit.

10 Q. Let's back up and talk about your childhood. Where did you

11 grow up?

12 A. In Milwaukee, Wisconsin.

13 Q. What part of Milwaukee?

14 A. The north side.

15 Q. Who did you live with growing up?

16 A. Predominantly with my grandmother.

17 Q. Why did you live with your grandmother and not your parents?

18 A. Well, my father passed away when I was about 9. My mother

19 was in and out of correctional institutions.

20 Q. How did your father die?

21 A. He passed away of a brain tumor.

22 Q. And you said you were 9 years old?

23 A. Yes.

24 Q. Where did you attend high school?

25 A. North Division.

1 Q. Did you finish high school?

2 A. No.

3 Q. How far did you get?

4 A. I went to the ninth grade.

5 Q. And what happened after that?

6 A. I attended schools.

7 Q. But you didn't go anywhere past the ninth grade in high

8 school, is that right?

9 A. Got my G.E.D. My H.S.E.D.

10 Q. While you were incarcerated?

11 A. Yes.

12 Q. But when you were a teenager did you go past the ninth

13 grade?

14 A. No.

15 Q. After you finished school -- after you dropped out of high

16 school did you have any employment?

17 A. Yes. I worked for temp services.

18 Q. What kind of temp service jobs did you do?

19 A. Doing assembly, working in fast food restaurants, stuff of

20 that nature. Factory work.

21 Q. Let's talk about your family. You mentioned that your

22 father died when you were young. Is your mother still living?

23 A. No. She passed away in December of '98.

24 Q. When you were growing up, did you have any long term

25 relationships with women?

1 A. Yes.

2 Q. What was the longest relationship you had? Who was that
3 with?

4 A. Longest relationship I had was about 14 years. That was
5 with Monica Wade.

6 Q. Did you have any children with Miss Wade?

7 A. Yes. William, Sirena, and Jalisa Avery.

8 Q. And who is the mother of your other two children? Nafia and
9 Cynthia?

10 A. Cofe'a Tyler.

11 Q. I'm going to turn your attention to March 23rd, 1998. Do
12 you remember that day?

13 A. Yes.

14 Q. Tell the jury what happened that day.

15 A. Okay. I'm going to start off from the 20th. On the 20th I
16 got a -- I received a phone call from my grandmother telling me
17 that some Officers had came to her house and left one of their
18 business cards. Get with them. That I was to contact squad
19 124, I believe. So I called them and informed them that I'd be
20 down there that following Monday, which was the 23rd.

21 Q. And did you go down to the Police station on Monday, the
22 23rd?

23 A. Yes. Rode the bus down there, yeah.

24 Q. And did you have any idea at that time why the Police wanted
25 to talk to you?

1 A. No.

2 Q. Where were you taken when you got to the Police station?

3 A. To the C.I.B.

4 Q. What's the C.I.B.?

5 A. The Criminal Investigation Building.

6 Q. Were you questioned by Detectives?

7 A. Well, I informed Officer who I was looking for. He told me
8 somebody be out with me. I think it was a Detective Phillips
9 who came out and talked to me. Took me back to the
10 interrogation room.

11 Q. After Detective Phillips took you to the interrogation room,
12 were you questioned by Detective Phillips and anyone else?

13 A. Detective Phillips and Detective DeValkenaere. I was
14 questioned by them.

15 Q. What were they questioning you about?

16 A. Well, initially they was telling me that they wanted me to
17 be a witness to a homicide, pretty much, you know.

18 Q. And did you cooperate with them and answer their questions?

19 A. Yes.

20 Q. At some point during this questioning session did they
21 inform you what homicide they were interested in? Who had been
22 killed?

23 A. They had shown me a picture of a -- the face of a dead
24 person. A dead woman. Asking did I know who that was? And I
25 didn't know who that was at the time, because when I met that

1 person, she had a wig on, so --

2 Q. Was that person Maryetta Griffin?

3 A. Yes. I know her as Mercedes at the time.

4 Q. Her nickname was Mercedes?

5 A. Yes.

6 Q. And when they showed you the picture of her, you didn't
7 recognize her at first because she didn't have a wig on? Is
8 that what you're saying?

9 A. Right. Right.

10 Q. But during this first questioning session with these
11 Detectives, they were asking you about the murder of this woman
12 Mercedes, is that right?

13 A. Yes.

14 Q. Okay. When was the last time that you saw Mercedes,
15 Maryetta Griffin?

16 A. That would have to be around February the 16th, between 5:30
17 and 6:00, I believe.

18 Q. This was 1998?

19 A. 1998, yes.

20 Q. Okay. Let's go over that day, February 16th, 1998. First
21 of all, starting in early February were you involved in running
22 a drug house?

23 A. Yes.

24 Q. And many of the people who came there were prostitutes, is
25 that right?

1 A. Yes.

2 Q. And tell the jury what you remember about February 16th,
3 1998?

4 A. Well, I remember coming over earlier that day. Being let in
5 the residence by Lucious Goins.

6 Q. What was the address of this house?

7 A. 2474 North Palmer Street.

8 Q. You were let in by Lucious Goins. Who is Lucious Goins?

9 A. That's Lorenzo Frost's nephew.

10 Q. Who is Lorenzo Frost?

11 A. He's the owner of the house at 2474. A distant cousin of
12 mine.

13 Q. So you were let in the house by Lucious Goins. What
14 happened after that?

15 A. We were -- well, we was sitting around playing dominoes and
16 stuff. Doc came over around --

17 Q. You mentioned Doc. Who's Doc?

18 A. Lorenzo Frost.

19 Q. Is Doc Lorenzo Frost's nickname?

20 A. Yes.

21 Q. Okay. So Doc came over to the house at some point?

22 A. Yeah. Around -- probably got off work around -- between
23 5:30 and 6:00, yeah.

24 Q. And what happened after Mr. Frost came over to the house?

25 A. So -- well, Frost had a Suburban truck. And the house is

1 located on a hill, so the -- drug addicts in the neighborhood,
2 when they see his Suburban on top of the hill, they knew he was
3 there, so they would start coming by. So I think Valerie
4 Eubanks and Joanne Hollins had came over at that point.

5 Q. Who are Valerie Eubanks and Joanne Hollins?

6 A. Known prostitutes of the neighborhood.

7 Q. And then they came over to the house after Lorenzo Frost?

8 A. Yes.

9 Q. After these two women came over to the house, what happened?

10 A. They was sitting around, asking for drugs. At some point
11 between 5:30, 6:00 time, Mercedes came over.

12 Q. And that's Maryetta Griffin?

13 A. Yes.

14 Q. And what happened after Mercedes came over to the house?

15 A. Like I said, they was sitting around asking for drugs.

16 Eventually I think Frost gave them some drugs, and they got
17 ready to leave so they can go out and hustle.

18 Q. What do you mean, so they would go out and hustle?

19 A. Go out, make money.

20 Q. Who left the house at that point?

21 A. Everyone in the house left besides me. I was the only one
22 left there.

23 Q. Did Maryetta Griffin ever come back to the house that night?

24 A. No.

25 Q. What happened after everyone -- Lorenzo Frost and the women

1 left the house and you remained in the house? What happened
2 after that? And about what time is this?

3 A. Between -- you know, it was between 5:30 and 6:00. That's
4 what my memory is saying. I went back upstairs and stayed there
5 pretty much over into the night until about 8:30, 9:00. Then
6 Lakesha Hall came over.

7 Q. Tell the jury who Lakesha Hall is?

8 A. Lakesha Hall is Ray, Lucious's girlfriend. Her purpose
9 coming over that night was we was gonna celebrate Ray's
10 birthday. Celebrating his birthday. His birthday was on the
11 17th. He never showed up. He went somewhere else. Fell
12 asleep. So me and Lakesha start partying. She brought some
13 marijuana, some beer, and some shoes. So we start partying with
14 the marijuana and the beer. Trying to put the moves on Maryetta
15 Griffin (sic). She wasn't going for it.

16 Q. You're trying to put the moves on who?

17 A. Lakesha Kenya Hall. Yes.

18 Q. Okay. And you said she wasn't going for it?

19 A. No, she wasn't going for it.

20 Q. Okay. And what happened after that?

21 A. Well, after asleep on the couch -- Lakesha fell asleep on
22 the chair, couch, and eventually she got up and went in there
23 and got in the bedroom. Got in the bed. Got in the bed and
24 went to sleep.

25 Q. And did you go to sleep for the night at that point?

1 A. Yeah. I was asleep for the night, yeah.

2 Q. What time did you wake up on February 17th, the next day?

3 A. I woke up between 4:30 and 5:00, watching the Shepherd's
4 Chapel, Father Murray. I was watching that. Went in, looked in
5 on Lakesha. Went back on the couch watching T.V. Doze on and
6 off, you know.

7 Q. And what happened next that day, on the day of the 17th?

8 A. Sometime that morning I received a call from Miss Hollins,
9 Joanne. Asked me had I heard that Mercedes had been found dead.
10 And I told her no, she was -- I was like she was over there to
11 the house on Palmer Street yesterday. I told her she was over
12 there like yesterday. Like no, I didn't hear that.

13 Q. And what happened after you received this phone call? What
14 did you do next that day?

15 A. I just waited for Doc to come. He called. I told him I had
16 received a call from Joanne. Doc said don't be saying that
17 woman's up there. You know, be talking like that. And I ain't
18 think nothing of it.

19 Q. Did you get into any kind of argument with Maryetta Griffin?

20 A. No.

21 Q. On the day or night of February 16th, 1998, when she was at
22 the house?

23 A. No.

24 Q. Was Maryetta Griffin alive when she left the house on
25 February 16th, 1998?

1 A. Yes.

2 Q. Was that the last time that you saw Maryetta Griffin, when
3 she left the house on February 16th 1998?

4 A. Yes.

5 Q. Did you have anything to do with Maryetta Griffin's murder?

6 A. No.

7 Q. Let's go back to March 23rd, 1998. You have told us that
8 you went to the Police station voluntarily?

9 A. Yes.

10 Q. And you were being interrogated about the murder of Maryetta
11 Griffin by Detectives DeValkenaere and Phillips. What kinds of
12 questions were they asking you?

13 MR. SMOKOWICZ: I'm going to object to the form of the
14 question. He said they. These are individual Defendants. I
15 believe it should be broken down. Multiple form.

16 THE COURT: Should be more specific.

17 MR. ELSON:

18 Q. What kind of questions was Detective DeValkenaere asking?

19 A. He was asking me did I kill that woman? Did I know who
20 killed that woman? Did Frost kill that woman? Did Ray kill
21 that woman? Did Frost have one of his girls kill that woman?
22 Do I know who killed that woman? Those the questions, asking
23 over and over, pretty much.

24 Q. And what type of questions was Detective Phillips asking you
25 during that interrogation session?

1 A. Pretty much the same. They were tag team. Did I know who
2 killed that woman? Did I kill that woman? Did one of Frost's
3 girls kill that woman? Did Ray kill that woman?

4 Q. And in response to both Detectives' questions, what were you
5 saying?

6 A. No. Absolutely not.

7 Q. At a certain point in this interrogation session was there a
8 break in the interrogation, and then the interrogation by
9 Detectives Phillips and DeValkenaere resumed?

10 A. Yes.

11 Q. And after the questioning resumed, tell the jury what
12 happened.

13 A. Well, after that they came in with more of the questions.
14 Saying, you know, who did it? They was -- more of the same
15 questions. Like you killed that woman. Tell us you killed that
16 woman. Believe DeValkenaere was flickering a lighter in my face
17 at that time.

18 MR. SMOKOWICZ: I'm sorry. I didn't hear. Who is
19 flickering?

20 THE WITNESS: I believe it was DeValkenaere. And I
21 think Phills (phonetic) was open hand punching me, hitting me
22 with his hand flat in the chest.

23 MR. ELSON:

24 Q. I think you said Detective Phills. Did you mean Detective
25 Phillips?

1 A. Detective Phillips, yes. Having me standing long times in
2 interrogation room. Handcuffed high to the wall, where I had to
3 stand. And like I said, it was questions like did you kill this
4 woman? You know who killed this woman?

5 Q. Okay. I'm going to show you -- well, Judge, I would offer
6 into evidence Plaintiff's Exhibit 11-A, which is the Police
7 report dictated by Detective DeValkenaere. The report -- the
8 date of the report is March 24th, 1998.

9 THE COURT: Any objection to that?

10 MR. SMOKOWICZ: One second, Your Honor. I have to see
11 what it is.

12 THE COURT: Is that DeValkenaere and Phillips?

13 MR. ELSON: Yes.

14 MR. SMOKOWICZ: It is, Your Honor, and I have no
15 objection to 11-A.

16 THE COURT: The Court will receive it.

17 MR. ELSON:

18 Q. Okay, William, I'm showing you on your screen Plaintiff's
19 Exhibit 11-A, which is a Police report which purports to be a
20 report of the interview, the interrogation of you by Detective
21 DeValkenaere and Detective Phillips on March 23rd, 1998. I want
22 to -- this is the first page of the report that I'm showing you,
23 and I want to show you specifically the second page of the
24 report. And I want to call your attention to the highlighted
25 portion of this report. And I want to read it for you and then

1 ask you a question. The highlighted portion of the report
2 states: He stated -- he, meaning William Avery -- he stated
3 that he and Mercedes had sex, and this was oral sex that she
4 performed on him. He stated this was not actually a date
5 and he didn't pay her anything for this. It was just that they
6 had sex together. Do you see that?

7 A. Yes.

8 Q. Did you make that -- those statements to Detectives
9 DeValkenaere and Phillips?

10 A. No. No.

11 Q. Did you tell Detectives DeValkenaere and Phillips that you
12 had sex with Maryetta Griffin?

13 A. No.

14 Q. Did you have sex with Maryetta Griffin?

15 A. No.

16 Q. On February 16th, 1998?

17 A. No. No.

18 Q. At some point did the interrogation by Detectives Phillips
19 and DeValkenaere end?

20 A. This was around 5:30 when their shift was changing. That's
21 when I met Detective Hernandez and Detective Katherine Hein. I
22 told them, like I -- I was telling them that I didn't want to
23 talk to Detective Phillips and DeValkenaere, you know what I'm
24 saying, because they was in there harassing me, trying to force
25 me to say that I knew something about that woman's murder. And

1 one of the Detectives was like don't worry about that. Don't
2 worry about that.

3 Q. What type of questions did Detective Hein ask you during
4 this interrogation?

5 A. Well, they came in with pretty much more of the same
6 questions, but this time she was -- she was also, you know,
7 getting my name and age and, you know, my history. My
8 background and stuff at that time.

9 Q. And Detective Hernandez was also present for this interview?

10 A. Yes.

11 Q. And what type of questions was Detective Hernandez asking
12 you?

13 A. Did I kill that woman? Did I know who killed that woman?
14 Did Frost kill that woman? Did I know?

15 Q. And what were you saying?

16 A. No.

17 Q. Did you ask them for a lawyer?

18 A. Several times.

19 Q. How did they respond to that?

20 A. No. Don't work that way.

21 Q. Did you tell them that you didn't want to talk to them?

22 A. Yes. Several times. I even sign a paper saying I don't
23 want to talk to you all.

24 Q. Who told you it didn't work that way when you asked for a
25 lawyer?

1 A. It was Detective Phillips and Detective Hernandez.

2 Q. What happened after Detectives Hein and Hernandez finished
3 questioning you during this time period?

4 A. I was still being handed over to the City Jail. Up to the
5 City Jail holding cells for the night.

6 Q. And about what time was that?

7 A. About 10:30.

8 Q. Did you go to sleep for the night?

9 A. Yes.

10 Q. And when you woke up the next day on March 24th, 1998, were
11 you questioned by any Detectives that day?

12 A. Yes.

13 Q. Who were the first Detectives to question you on March 24th?

14 A. I believe the first Detective -- it was Detective Phills
15 (sic) and Detectives Hernandez.

16 Q. When you say Phills, you mean Phillips, right?

17 A. Phillips, yes.

18 Q. What kinds of questions were -- what kinds of questions did
19 Detective Phillips ask you at that point?

20 A. It was kind of accusing me at this point. Like I know who
21 killed that woman. They was telling me that me and Ron had made
22 a bond. Lorenzo Frost. That we had made some type of bond
23 together. Telling me to forget the bond. Telling me to --
24 wanted to tell the D.A. that I was cooperative with them. That
25 I didn't want to start up here with homicide. Wanted to start

1 down here with manslaughter. You know, they was -- they was
2 feeding this story now. Create the story.

3 Q. And Detective Hernandez was present for this interview?

4 A. Yes.

5 Q. What was Detective Hernandez saying to you?

6 A. Like we almost had you. Gotta tell us so we can help you.
7 We can't help you out. We receive many letters from guys
8 coming -- from up north after it's too late. They done got
9 natural life in prison. Like that. Like hypothetically
10 speaking you woke up, caught Miss Griffin in your pocket. She
11 snatched away. Fell down the stairs, and that's how we can
12 explain she broke her neck. Frustrated like yeah,
13 hypothetically speaking that could happen, but it didn't. Like
14 that stuff. To that nature.

15 Q. So Detective Hernandez presented you with a hypothetical?

16 A. Yes.

17 Q. And this is the hypothetical that he created?

18 A. Yes.

19 Q. And how did you respond to that?

20 A. I told him yeah, hypothetically speaking that could happen,
21 but it didn't. It didn't.

22 Q. Did you ask for a lawyer during this interrogation session?

23 A. Several times. All during the interrogation I asked for a
24 lawyer.

25 Q. And how did these Detectives respond to your request for a

1 lawyer?

2 A. No, it don't work that way. I even asked the Lieutenant for
3 a lawyer.

4 Q. Is that when Detective Phillips said that to you? That it
5 didn't work that way?

6 MR. SMOKOWICZ: I'm going to object. It's leading.

7 THE COURT: Well, it is, but he may answer, if he can.

8 THE WITNESS: Yes.

9 MR. ELSON: I'm going to show you -- I'd like move
10 into evidence another Exhibit, Judge. This is Plaintiff's
11 Exhibit 11-C. This is a handwritten report authored by
12 Detective Gilbert Hernandez. The date is March 24th, 1998.

13 THE COURT: Any objections?

14 MR. SMOKOWICZ: No, Your Honor.

15 THE COURT: The Court will receive 11-C.

16 MR. ELSON: And I would also move into evidence
17 Plaintiff's Exhibit 11-D, which is the typewritten report of
18 March 24th, 1998, by Gilbert Hernandez.

19 THE COURT: All right.

20 MR. SMOKOWICZ: 11 what?

21 MR. ELSON: 11-D.

22 MR. SMOKOWICZ: "D" as in dog?

23 MR. ELSON: Yes.

24 THE COURT: The Court will receive those Exhibits.

25 MR. SMOKOWICZ: No objection.

1 MR. ELSON:

2 Q. Now I'm showing you Plaintiff's Exhibit 11-C. This is a
3 handwritten report that purports to be a report of the
4 interrogation that you just described. And I want to direct
5 your attention specifically to the highlighted portion of this
6 report, and I'm going to read it to you. It says subject states
7 that he was awakened by Mercedes going through his pockets,
8 pulling out his money. Subject states that he was startled.
9 Subject states that he got up on his feet and grabbed one of
10 victim hands. Subject states that Mercedes and him started to
11 fight. Subject states he was saying, quote, what are you doing,
12 unquote. Subject states that Mercedes pulled and ran toward the
13 stairs. Attempt to get away. Subject states he doesn't
14 remember what happened. Subject states Ronnie called. Subject
15 told Ronnie get over here. I think I killed this bitch.
16 Subject states that Ronnie shouldn't have gotten rid of the
17 body. Questioned subject as to how he killed Mercedes. Subject
18 stated, quote, I am responsible, unquote. I just don't remember
19 how. Did you make any of those statements to Detectives
20 Hernandez and Phillips when they were questioning you on
21 March 24th, 1998?

22 A. No. No.

23 Q. Did you at any time while they were questioning you admit to
24 being responsible for the death of Maryetta Griffin?

25 A. No.

1 Q. At any time when they were questioning you, did you admit to
2 getting into any kind of altercation with Maryetta Griffin when
3 she was going through your pockets?

4 A. No.

5 Q. Showing you Plaintiff's Exhibit 11-D. This is the
6 typewritten version of Detective Hernandez's handwritten report.
7 And I'm again going to read to you the highlighted portion.
8 Subject states that he was laying on the couch and fell asleep.
9 Subject states that he was awakened by Mercedes going through
10 his pockets and pulling out his money. Subject states that he
11 was startled. Subject states that he got up on his feet and
12 grabbed one of the victim's hands. States that Mercedes and him
13 started to fight. Subject states that he was saying what are
14 you doing? Subject states that Mercedes pulled and ran toward
15 the stairs, attempting to get away. Subject states that he
16 doesn't remember what happened. Subject states Ronnie called.
17 This subject told Ronnie get over here. I think I killed this
18 bitch. This subject stated that Ronnie shouldn't have gotten
19 rid of the body. I questioned the subject as to how he killed
20 Mercedes. Subject states I'm responsible. I just don't
21 remember. Again, did you make any of those statements to
22 Detectives Hernandez and Phillips during that interrogation?
23 A. No. No. Absolutely not.
24 Q. What happened that day, March 24th, after Detectives
25 Phillips and Hernandez finished questioning you initially?

1 A. Well, Kathy -- Katherine Hein, Detective Hein, was
2 interrogating me, so she had me go back over the events.

3 MR. SMOKOWICZ: I'm sorry? She had to go back what?

4 THE WITNESS: Back over the events from the 16th
5 leading up to the 17th.

6 MR. ELSON:

7 Q. And what kind of questions was she asking you?

8 A. She was asking -- she was telling me that that woman didn't
9 have to die. Telling me about that woman had children. That
10 the woman was into church and stuff before she had got mixed up
11 into drugs. Stuff like that. She was just getting I guess
12 familiar with me. Steady asking me questions like did I know
13 that woman? Did I know where that woman's clothes was?

14 Q. What were you saying to her in response to these questions?

15 A. Said no. Just like I said, don't know nothing about
16 homicide. I didn't know.

17 MR. ELSON: Judge, I'd like to move into evidence
18 Plaintiff's Exhibit 11-F, which is the typewritten report by
19 Detective Kathy Hein of her questioning of Mr. Avery on
20 March 24th, 1998.

21 THE COURT: Any objection?

22 MR. SMOKOWICZ: With the proviso that it indicates
23 that it was also witnessed by Detective Hernandez. No
24 objection.

25 THE COURT: All right.

1 MR. ELSON:

2 Q. Now, William, I'm showing you Plaintiff's Exhibit 11-F,
3 which is Detective Hein's report. The first page indicates that
4 this is a report of the interview that she conducted with you on
5 March 24th, 1998. And I specifically want to call your
6 attention to the second page of the report, to the highlighted
7 portion which I'm going to read. Says Avery stated that he and
8 Mercedes then had oral sex, penis to mouth, and that Mercedes
9 left after that. When Detective Hein was questioning you on
10 March 24th, did you ever tell her that you had oral sex, penis
11 to mouth, with Mercedes?

12 A. No.

13 Q. Is this a false statement in this report?

14 A. Yes.

15 Q. How long did the interrogation session with Detective Hein
16 and Detective Hernandez last?

17 A. Well, off and on all that -- all that day from like 8:30
18 a.m. to like 2:30 that morning. That 25th. It was just -- it
19 was all day.

20 Q. So it lasted into the morning of March 25th?

21 A. Yes.

22 Q. During that interrogation with Detective Hein, did you ask
23 for a lawyer?

24 A. Several times, yes.

25 Q. And how were your requests responded to by Detective Hein?

1 A. You'll get a lawyer soon enough. You know. But it don't
2 work that way. She was like you get a lawyer soon enough.

3 Q. After she and the other Detectives finished questioning you
4 in the early morning hours of March 25th, what happened next?

5 A. I was sent back over to the City Jail. To the City Jail, to
6 the other cells for the night to go to sleep.

7 Q. And you woke up later in the morning on the 25th?

8 A. Yes.

9 Q. What happened after you woke up later in the morning?

10 A. I was met by Detective Phillips at that time, who came in
11 and said he was ordered to talk to me some more by his
12 Lieutenant because he was studying -- studying this new D.N.A.,
13 telling me how much money he was gonna get for overtime for
14 doing D.N.A. study. He was getting like a \$7,000 raise or
15 something.

16 Q. After you finished this discussion with Detective Phillips,
17 what happened?

18 A. Then I was -- I was sent over to booking, over in the County
19 Jail.

20 Q. And were you ultimately charged with a crime?

21 A. Yes.

22 Q. What were you charged with?

23 A. Keeper of a drug house, and conspiracy to sell cocaine.

24 Q. Were you charged with the homicide of Maryetta Griffin at
25 that point?

1 A. No.

2 Q. After you were charged with the drug offenses and sent to
3 jail, were there any newspaper articles written about you?

4 A. Could you repeat that question?

5 Q. Yes. After you were charged with the drug offenses and sent
6 to jail, as you just described --

7 A. -- yes --

8 Q. -- did you find out that there were any newspaper articles
9 written about you?

10 A. Yes. The Detectives -- Detectives had someone to take -- to
11 scrape my D.N.A., so I was called over to clinical service.
12 Took pubic hair, fingernail clippings, head hairs, and my blood.
13 Once they completed that, Mr. Phillips was getting ready to walk
14 out the door. He was like choo choo. And by the way, you made
15 the paper like that. So when I went back to the pod, that's
16 where I seen that article saying that I confessed to this
17 murder.

18 Q. What newspaper was that?

19 A. From the Milwaukee Journal.

20 Q. And can you describe the article? How long was it?

21 A. It was almost a full page.

22 Q. Did it have a photograph of you?

23 A. Yeah. Photograph -- photograph saying that me and Lorenzo
24 Frost--

25 MR. SMOKOWICZ: Your Honor, we're getting into hearsay

1 now. Objection.

2 THE COURT: Yeah. The last part of the answer will be
3 stricken.

4 MR. ELSON: Judge, I'd like to move into evidence the
5 newspaper article.

6 THE COURT: Any objection to that?

7 MR. SMOKOWICZ: What's the --

8 MR. ELSON: The Defendant's Exhibit is Exhibit 1042.

9 MR. SMOKOWICZ: Your Honor, this article is not dated.

10 THE COURT: Well, is it a defense Exhibit?

11 MR. SMOKOWICZ: It is a defense Exhibit, but it wasn't
12 being offered for the purpose of anything with respect to that
13 date.

14 THE COURT: How can we substantiate that this is the
15 date that we're talking about then, counsel?

16 MR. ELSON: I can ask a few more questions and attempt
17 to do that, Judge.

18 THE COURT: All right.

19 MR. ELSON:

20 Q. What date were you -- what date were you told by Detective
21 Phillips that you made the newspaper?

22 A. Maybe it was the 30th. If I'm not mistaken, I believe it
23 was the 30th. I can't be for sure.

24 Q. And you looked at the Milwaukee Journal Sentinel that day?

25 A. Yes.

1 MR. ELSON: And just for identification purposes I'd
2 like to show the witness Defendant's Exhibit 1042.

3 THE COURT: Okay. All right. He said 3/30. We're
4 talking '98?

5 MR. ELSON: Yes, this is 1998?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 MR. ELSON:

9 Q. Is this the newspaper article that you saw on March -- on or
10 around March 30th, 1998?

11 A. Yes.

12 MR. ELSON: I'd offer it into evidence, Judge, as the
13 article that he saw.

14 THE COURT: All right. The Court will receive it.

15 MR. ELSON:

16 Q. All right. And the headline of the article is man admits to
17 killing, report says. Is that accurate, William?

18 A. Is it accurate?

19 Q. Yeah. Is this the article that you saw?

20 A. Yes. Yes, that's the article. Yes.

21 Q. And you read through the article that day?

22 A. Yes.

23 Q. And you saw your photograph in the newspaper?

24 A. Yes.

25 Q. What were you thinking when you saw this?

1 MR. SMOKOWICZ: Objection. Relevance.

2 THE COURT: No, no, the Court will allow it.

3 THE WITNESS: I didn't get a good feeling, you know.

4 I'm saying I didn't commit this crime. And, you know -- and it
5 ain't good to be falsely accused about a crime you ain't
6 committed. You know, they putting this stuff in the newspaper
7 for the public to see. I was uncomfortable with that. I was
8 scared. Like, you know, it just ain't me. It wasn't good.

9 MR. ELSON:

10 Q. Did you eventually go to trial on the drug charges?

11 A. Yes.

12 Q. And you were convicted?

13 A. Yes.

14 Q. When were you convicted?

15 A. I think it was around July of that year I was convicted.

16 Q. July of 1998?

17 A. Yes.

18 Q. Where did you serve your time on the drug offenses?

19 A. Well, I was shipped out of State due to overcrowding to
20 Sayre, Oklahoma.

21 Q. This was a prison in Oklahoma?

22 A. Yeah. This CCA. The name of the prison was CCA. That was
23 the area. It was in the County or whatever Sayre, Oklahoma, was
24 in.

25 Q. Okay. After you were convicted of the drug charge --

1 MR. SMOKOWICZ: Your Honor, if we're done with the
2 Exhibit, I -- pardon -- apologize for the interruption, but are
3 we done with the Exhibit?

4 THE COURT: All right.

5 MR. SMOKOWICZ: Thank you, Your Honor.

6 MR. ELSON:

7 Q. After you were convicted of the drug charges, did you file
8 any kind of complaint against the Detectives who interrogated
9 you?

10 A. Yes. I filed a Notice of Claim with the State's Attorney
11 General complaining -- complaining to them about the misconduct
12 of the Officers. That I -- you know, was complaining to them
13 about what the Officers -- the misconduct the Officer had did,
14 you know.

15 Q. Can you explain to the jury what a Notice of Claim is?

16 A. It's a document that I can put another party on notice that
17 you intend on suing. You know, reporting on misconduct.

18 Q. When did you file this Notice of Claim?

19 A. I believe it was in November of '98.

20 MR. ELSON: And, Judge, we'd offer into evidence
21 Plaintiff's Exhibit Number 6, which is the Notice of Claim.

22 THE COURT: Okay. Any objection?

23 MR. SMOKOWICZ: I wouldn't object, although certain
24 portions of it may not be appropriate to display to the jury.

25 THE COURT: What is going to be displayed to the jury,

1 counsel? The whole thing? Or --

2 MR. ELSON: Well, maybe we should have a side-bar
3 about that. I can explain.

4 THE COURT: All right.

5 (Whereupon a side-bar conference was held off the
6 record. Upon conclusion of the side-bar conference, the
7 proceedings continued as follows:)

8 THE COURT: All right. The Court will receive that
9 Exhibit subject to the sidebar conference.

10 MR. ELSON:

11 Q. Showing you Plaintiff's Exhibit Number 6. Is this the
12 Notice of Claim that you submitted?

13 A. Yes.

14 Q. And this indicates that you submitted it to the Attorney
15 General, is that correct?

16 A. Yes.

17 Q. And that you submitted it -- or it was notarized on
18 November 27th, 1998?

19 A. Yes.

20 Q. And the names of the Detectives who you submitted the claim
21 against are Gilbert Hernandez, Daniel Phillips, Katherine Hein,
22 and James DeValkenaere. Is that right?

23 A. Yes.

24 Q. And can you tell the jury in general terms the allegations
25 that you were making against those Detectives in the Notice of

1 Claim?

2 A. Yeah. I pretty much told Attorney General from the 23rd --
3 well, actually from the 20th to the end of the interrogation on
4 the 25th, what took place. But I explained to them in there
5 that I volunteered down there. That where alleged confession
6 came from was from predominantly Detective Gilbert Hernandez and
7 Detective Phills (sic). And just went over the events. What
8 happened. That I did not commit this murder, you know,
9 basically. Telling Attorney General that I did not kill that
10 woman.

11 Q. All right. And you testified that at the time you made this
12 claim you were in prison on the drug offenses, is that right?

13 A. Yes.

14 Q. And were you interviewed by any Milwaukee Police Detectives
15 while you were serving time in prison on the drug charges?

16 A. Yeah. While in Sayre I was -- Detective Heier and Detective
17 Armbruster -- maybe not saying the name right -- came to
18 Oklahoma. And two -- one or two hours down there Detectives
19 interview me about this -- that homicide again. Didn't get a
20 good feeling then. But what was going on, they were still
21 asking me where is this woman's clothes? Where is this woman's
22 clothes? Where is this woman's jewelry? Asking me stuff like
23 that. Detective Heier and Armbruster.

24 Q. Had you ever met these two Detectives before?

25 A. No. Not to my knowledge, no.

1 Q. Were these Detectives involved in any way in interrogating
2 you back in 1998 about the Griffin homicide?

3 A. No.

4 Q. What were you telling them?

5 A. I was telling them I don't want to talk to you. I thought I
6 was done with this. And I filed a grievance within the
7 institution letting them know that I was contacting my family
8 about a lawyer. That I don't want to talk to no one without no
9 lawyer, because this nightmare was -- I felt was starting all
10 over again.

11 Q. How long did this interrogation last with these Detectives?

12 A. Well, I don't know. They got it on record. Like -- I guess
13 I can't be too for sure how long that one lasted.

14 Q. How did it end?

15 A. Me getting up, running out that door when that Detective put
16 his feet in that door.

17 Q. You ran out of the door? Is that what you said?

18 A. Yeah. Yeah.

19 Q. When were you released from prison after serving your
20 sentence on the drug charges?

21 A. I believe it was June 2004? Like in June, 2004.

22 Q. How did it feel to finish serving your sentence and to be
23 free?

24 A. Well, it felt good to be released, but I still worried, you
25 know. Basically Detectives steady come to me about this

1 homicide that I didn't commit, so --

2 Q. What were you worried about?

3 A. Being charged with a homicide that I didn't commit.

4 Q. When you got out of prison in 2004, what were your plans for
5 your life?

6 A. You know, reunite with my family. Get my life back
7 together. Get on track. Get me -- like I did when I got out,
8 start my own business and raise my -- finish raising my kids.

9 Q. Now, did something happen then that derailed your plans?

10 A. Yeah. I was charged with this homicide. With Maryetta
11 Griffin's homicide.

12 Q. All right. Let's go to the day of September 21st, 2004.
13 What happened that day?

14 A. Well, that day -- that's the day I had a scheduled
15 appointment with my Parole Officer from the drug conviction. So
16 I went -- when I got to his house -- I mean to his office --
17 when I was -- when I got to his office, that's when I was
18 arrested. I was arrested in his office.

19 Q. Arrested for what?

20 A. For the homicide of Maryetta Griffin.

21 Q. What was going through your mind when you were arrested?

22 A. I am arrested for a crime I ain't committed.

23 Q. Did you -- were you -- and did you go through a process in
24 the Griffin homicide where you entered a plea of guilty or not
25 guilty?

1 A. Yes.

2 Q. And how did you plead?

3 A. Not guilty.

4 Q. Did you end up having a trial on the Maryetta Griffin
5 homicide charge?

6 A. Yes.

7 Q. Who testified at your trial?

8 A. Detective Phillips, Detective Hernandez, Detective Katherine
9 Hein.

10 Q. And in terms of those Detectives, in general terms what did
11 they testify to at your trial?

12 MR. SMOKOWICZ: Objection, Your Honor. That's
13 irrelevant and subject to immunity.

14 MR. ELSON: It's not irrelevant, Judge. It's
15 certainly relevant what happened at his criminal trial that
16 caused him to be convicted.

17 MR. SMOKOWICZ: Witnesses have absolute immunity, Your
18 Honor.

19 THE COURT: Well, do we have a copy of the record that
20 was -- is there something in these Exhibits that has a record of
21 that testimony?

22 MR. ELSON: Yeah. The -- these three Detectives'
23 testimonies are Exhibits in Plaintiff's Exhibit list.

24 THE COURT: Well, then we should go to the Exhibit
25 list. It's a matter of public record. Overrule the objection.

1 He can be cross-examined on it if this witness testified
2 incorrectly.

3 MR. ELSON:

4 Q. In general terms what did those Detectives testify to at
5 your criminal trial?

6 A. That I made admissions admitting that I killed Maryetta
7 Griffin.

8 Q. Who else other than those three Detectives testified at your
9 criminal trial?

10 A. The jailhouse liars. Keith Randolph, Antron Kent, and
11 Jeffrey Kimbrough.

12 Q. Let's start with Antron Kent. What was your connection to
13 Antron Kent?

14 A. He was just another fellow inmate in the prison. I think --
15 you know, we didn't really socialize together.

16 Q. Where were you incarcerated with him? Is this in Oklahoma?

17 A. Yes.

18 Q. Okay. And what did Antron Kent testify to in general terms
19 at your criminal trial?

20 A. Antron Kent testified that at recreation period that I
21 supposedly was feeling bad and remorseful about murdering
22 Maryetta Griffin. That I said to him that I murdered Maryetta
23 Griffin. And I did not.

24 Q. In fact, did you ever tell Antron Kent that you killed
25 Maryetta Griffin?

1 A. No.

2 Q. Have you ever had a conversation in your life with Antron
3 Kent?

4 A. No.

5 Q. Let's talk about Jeffrey Kimbrough. What was your
6 connection to Jeffrey Kimbrough?

7 A. He just another fellow inmate in the prison.

8 Q. Is he a fellow inmate in Oklahoma?

9 A. Yes.

10 Q. And in general terms what did Jeffrey Kimbrough testify at
11 your criminal trial?

12 A. That he supposedly overheard the conversation with Antron
13 Kent.

14 Q. And is it possible that Jeffrey Kimbrough overheard a
15 conversation that you had with Antron Kent?

16 A. No.

17 Q. What conversation did Jeffrey Kimbrough say he overheard?

18 A. He say he overheard me supposedly confessing to Antron Kent
19 to the murder of Maryetta Griffin.

20 Q. Was Jeffrey Kimbrough lying about that?

21 A. Yes.

22 Q. Did you know Jeffrey Kimbrough at all when you were
23 incarcerated with him?

24 A. No.

25 Q. Let's talk about Keith Randolph, the third jailhouse

1 informant. What's your connection to Keith Randolph?

2 A. Keith Randolph? I know him prior to in prison. He actually
3 used to date one of my aunts. But he actually is the one who
4 showed me how to fill out the Notice of Claim. Like what was
5 the purpose of the Notice of Claim.

6 Q. So you were incarcerated with Keith Randolph at the time
7 that you submitted your Notice of Claim?

8 A. Yeah. 1998 in Dodge.

9 Q. That's Dodge Correctional?

10 A. Yes.

11 Q. In general terms what happened with Keith Randolph's
12 testimony at your criminal trial?

13 A. Well, actually -- he actually got up on the stand to recant,
14 and the prosecutor, Mark Williams, he end up reading the paper
15 stating what he had made prior to the trial. Because he was --
16 Randolph was up there recanting his statement.

17 Q. And in general what did the statement that was read into
18 evidence at the criminal trial -- generally what did Keith
19 Randolph say in that statement?

20 A. That I supposedly had confessed to him about the murder of
21 Maryetta Griffin. And he --

22 Q. Did you ever confess to Keith Randolph to killing Maryetta
23 Griffin?

24 A. No. No.

25 Q. And you testified at your criminal trial, right?

1 A. Yes.

2 Q. What did you testify to at your criminal trial?

3 A. I testified that I didn't kill Maryetta Griffin. I did not
4 have sex like the State star witness at the time -- the star
5 witness testified. What else? Told them I didn't kill that
6 woman. I ain't never said I killed that woman. I ain't never
7 thought I killed that woman. Like I said, it came from Gilbert
8 Hernandez. He made that statement.

9 Q. At the end of your criminal trial, what was the verdict?

10 A. Guilty.

11 Q. What were you thinking when you heard that guilty verdict
12 read?

13 A. Like I'm gonna spend the rest of my life in prison for a
14 crime I didn't commit.

15 Q. After you were found guilty, did you have a hearing where
16 the Judge sentenced you?

17 A. Yes.

18 Q. Tell us about that hearing. Did you have an opportunity to
19 say anything?

20 A. Yeah.

21 Q. What did you say at the sentencing hearing?

22 A. You know, Miss Griffin's kids was sitting right there.
23 Talked to them, telling them that I did not kill they mother.
24 This just a vicious vendetta from the Police because I wrote the
25 Attorney General telling them about what they -- what they had

1 did. And this is just to further cover their steps. And that
2 pretty much I did not hurt you all mother. I didn't kill you
3 all mother. I don't know who killed your mother. I didn't have
4 nothing to do with that. These people just lying, point blank.

5 Q. What was the sentence that was imposed on you?

6 A. Sentence me to 40 years in prison.

7 Q. What was going through your mind when you heard that?

8 A. All kinds of things. I was just thinking all kinds of
9 things. I was thinking about my children. They gonna have to
10 grow up without a father. Same type of life I did, growing up
11 without a father. Like I'm just gonna miss my family, you know
12 what I'm saying? I'm just -- I'm messed up. I'm messed up.
13 You know, hope is like -- wow.

14 Q. What prison were you sent to after you were sentenced?

15 A. I was sentenced to Waupun Correctional Facility in Dodge.

16 Q. How many years did you serve in Waupun Prison?

17 A. About -- I think -- I think I served about 6-and-a-half.
18 About 6 years. 6-and-a-half years. Something like that, yes.

19 Q. Can you describe for the jury what the living conditions
20 were like in Waupun Prison?

21 A. It's a very structured environment. You know, pretty much
22 when you eat, sleep, get up. If you gonna work. Just like
23 extremely cold in the winter, extremely hot in the summer, you
24 know. You forced to perform random strip searches.

25 Q. Let me ask you about the strip searches. Can you describe

1 what a strip search consists of in Waupun?

2 A. Well, a strip search is like -- well, you like get a visit
3 from an attorney, a family member, or working in the kitchen,
4 you subject to strip all your clothes down, put your hands
5 behind your ears, lift up your tongue, lift up your feet, spread
6 your cheeks. Bend over. Cough. Just humiliating thing, strip
7 searches.

8 Q. Approximately how many times were you subjected to that kind
9 of strip searching?

10 A. Like I say, you can be strip searched if you work in the
11 kitchen every day you come in and out. Or like you get a visit.
12 So it could have been -- 6 years I was there, probably got strip
13 searched maybe -- I don't know, probably 250 times, maybe.

14 Q. Did you work in the kitchen?

15 A. Yeah, I worked in the kitchen.

16 Q. Did you have other jobs in prison?

17 A. Yeah. I worked at maintenance. Building maintenance.

18 Q. Were you ever attacked in prison?

19 A. By Dwayne Griffin, one of her -- victim's -- I believe he
20 was a nephew.

21 Q. Tell the jury about that.

22 A. Well, we work in the kitchen. We worked in the kitchen
23 together, and I was telling him -- you know, constantly telling
24 him I did not hurt your kin folks, you know. And we get in a
25 scrap back there in the kitchen, you know. One time -- one time

1 he actually bit me, you know. But yeah, that's -- you know, I
2 was constantly defending that off with her people, by running
3 into her people like that. I didn't kill her. I didn't kill
4 her.

5 Q. Did any of your family members die while you were in prison
6 in Waupun?

7 A. Two of my uncles.

8 Q. Who were they?

9 A. Hank Bentley and Michael Bowers.

10 Q. Were you very close with them growing up?

11 A. Yeah. Hank was more like a father figure, you know. That
12 was my father's oldest brother. So --

13 Q. Were you able to attend their funerals?

14 A. Oh, no, no.

15 Q. Were there any other important events that you missed
16 while -- missed out on while you were in prison in Waupun?

17 A. Yeah, just -- just the fact of being a father to my kids. I
18 ain't no deadbeat, you know. Those are my kids. I love my
19 kids. I won't deny that. You know, I missed two of them
20 graduating before I got out.

21 Q. Who graduated?

22 A. Sirena and William Avery.

23 Q. From high school?

24 A. Yeah.

25 Q. And I take it you weren't permitted to attend their

1 graduations?

2 A. No.

3 Q. While you were in prison, did you make any attempts to
4 appeal your conviction?

5 A. Yes.

6 Q. Tell the jury about that. What did you do?

7 MR. SMOKOWICZ: Object. Relevance.

8 THE COURT: No, overruled. He may answer.

9 THE WITNESS: Well, I went through the process of
10 appealing my case through the Courts, and it was denied. It was
11 denied.

12 MR. ELSON:

13 Q. After your appeals were denied, did you make any other
14 efforts to overturn your conviction?

15 A. Yeah. Because -- yeah. Well, I really -- I wrote a letter
16 to John Chisholm especially when I seen the similarities to the
17 Walter Ellis case. I sent him a letter saying -- asking him,
18 begging him to please check the D.N.A. because --

19 Q. You said you sent a letter to John Chisholm. Can you tell
20 the jury who John Chisholm is?

21 A. Milwaukee's attorney. Assistant attorney.

22 Q. The District Attorney?

23 A. Yeah. He the District Attorney for Milwaukee.

24 Q. When did you write this letter to District Attorney
25 Chisholm?

1 A. When I -- when I get out? I got out in May? So probably
2 was in April, because this went pretty fast when I wrote that
3 letter. So I think it was around April sometime.

4 Q. April of what year?

5 A. 2010, it had to be, I believe. Yeah, yeah, 2010.

6 MR. ELSON: Judge, I'd offer into evidence Plaintiff's
7 Exhibit Number 7, which is the letter that Mr. Avery wrote to
8 District Attorney Chisholm.

9 THE COURT: All right. Any objection?

10 MR. SMOKOWICZ: None, Your Honor. Although the record
11 should reflect it's an April 5th letter.

12 THE COURT: Okay.

13 MR. ELSON:

14 Q. I'm showing you the April 5th, 2010, letter that you wrote
15 to District Attorney Chisholm. You see that?

16 A. Yes.

17 Q. And I want to call your attention to two highlighted
18 portions of this letter. The first one, second paragraph, says
19 in 2004 I was wrongly convicted of a murder. When the homicide
20 occurred the media speculated that she was another victim of a
21 serial killer, slash, rapist who had been preying on prostitutes
22 in that area for years. We now know that Walter Ellis is
23 responsible for at least 7 of these identical crimes. So at the
24 time that you wrote this letter to District Attorney Chisholm,
25 had it been publically reported that Walter Ellis was linked to

1 these murders?

2 A. Yes. Yes, it was in the media. It was in the news that
3 Innocent Project -- Wisconsin Innocent Project had tested D.N.A.
4 and stuff and came up in the Shontae Otts (phonetic) case, and
5 they were merged together.

6 Q. Calling your attention to the second highlighted portion.
7 It reads does the semen in her mouth belong to the killer? I
8 have no doubt that the D.N.A. under her fingernails, the blood
9 stains on her sweater belong to the person who murdered her. In
10 the interests of justice I am begging you to test this evidence.
11 You wrote that?

12 A. Yes. Yes.

13 Q. Show you the second page of the letter. And this portion
14 isn't highlighted, but I want to read from the top. It says all
15 of the signs point to my being innocent. Would I really want
16 any of this evidence tested if there was a chance it would be
17 mine? Did you write that?

18 A. Yes.

19 Q. What happened after you sent that letter to District
20 Attorney Chisholm?

21 A. Well, I think I received a letter a week or so later being
22 advised that they was gonna take a look at it, and look at
23 the -- test the evidence to see, and they be getting back with
24 me shortly.

25 Q. And who sent this letter to you a week-and-a-half or so

1 later?

2 A. I think it was John Chisholm, I believe.

3 MR. ELSON: I'd offer into evidence Plaintiff's
4 Exhibit 8 which is an April 19th, 2010, letter from Assistant
5 District Attorney Norm Gahn that Mr. Avery's referring to.

6 THE COURT: Okay. Any objection?

7 MR. SMOKOWICZ: No, Your Honor.

8 THE COURT: The Court will receive it.

9 MR. ELSON:

10 Q. Is this the letter you're referring to that you received
11 back in response to the letter you wrote to District Attorney
12 Chisholm?

13 A. Yes.

14 Q. And this was sent to you by an Assistant District Attorney
15 Norman Gahn, is that right?

16 A. Yes.

17 Q. And he's telling you that he has decided to resubmit the
18 evidence in your case for additional D.N.A. testing, right?

19 A. Yes.

20 Q. And that once that testing has been completed, he will
21 inform you of the results?

22 A. Yes.

23 Q. Did you subsequently receive another letter from the
24 District Attorney's Office?

25 A. Yes. About two weeks later I received a letter. It

1 informed me that the results came back not to me, but came back
2 to somebody they was looking at that they had in custody they
3 was investigating.

4 Q. And who sent you that letter?

5 A. Either John Chisholm or Gahn. One of the two.

6 MR. ELSON: Judge, I'd move into evidence Plaintiff's
7 Exhibit 9, which is the May 6, 2010, letter that Mr. Avery's
8 referring to.

9 THE COURT: Okay. Any objection?

10 MR. SMOKOWICZ: No, Your Honor.

11 THE COURT: The Court will receive it.

12 MR. ELSON:

13 Q. I'm showing you Plaintiff's Exhibit 9. Is this the letter
14 you're referring to that you received from the District
15 Attorney's Office?

16 A. Yes.

17 Q. And this is signed by, again, Assistant District Attorney
18 Norman Gahn and Assistant District Attorney Mark Williams. Is
19 that right?

20 A. Yes.

21 Q. Who is Assistant District Attorney Mark Williams?

22 A. I think that's the dude that's head of homicides.

23 Q. Was Assistant District Attorney Williams the person who
24 prosecuted you for the Maryetta Griffin homicide?

25 A. Yes, he was the prosecutor in the case.

1 Q. And I want to call your attention to that second paragraph
2 that's highlighted. Says a D.N.A. profile was developed from
3 relevant evidence that did not match you or other standards
4 originally collected during the investigation of the case. The
5 profile is consistent with another person who is charged with
6 crimes. You see that?

7 A. Yes.

8 Q. Do you know who that other person who was charged with
9 crimes ended up being?

10 A. Yes.

11 Q. Who?

12 A. Walter Ellis.

13 Q. How did you feel when you received this last letter from the
14 District Attorney's Office?

15 A. Oh, I was excited. I was elated. Actually another inmate
16 was coming past and he was like what's wrong? I was jumping up
17 and down. He's like you got some good news from the Court? I
18 was like no, my daughter had got a good grade in school or
19 something. I didn't want him to know that, because I was
20 fitting to get up out of there, you know. They have -- some
21 inmates try to keep you there with them.

22 Q. Did you then eventually have a hearing where the charges
23 were dismissed?

24 A. Actually they -- Chisholm, they appoint me -- say they be
25 appointing me a lawyer. Once I get the lawyer, they set up a

1 Court date. And fairly -- they was moving fast. I was out
2 pretty fast then.

3 Q. And talk to the jury about that hearing where the charges
4 were dismissed and your conviction was overturned. How did that
5 make you feel?

6 A. It made me -- I was feeling pretty good, you know. I was --
7 when I got released, I was feeling pretty good. I still was
8 like can get back to my life. I can get back to my life. Be
9 with my kids. Raise my kids.

10 Q. How many total years were you in prison for the murder of
11 Maryetta Griffin?

12 A. I think 6-and-a-half years. Yeah.

13 Q. What did you do the first night that you were free? What
14 did you do, and where did you go?

15 A. Got some food I believe from Taco Bell, and I located my
16 kids. You know, went and located my kids.

17 Q. Now, after your conviction was overturned, did you file a
18 petition with the State of Wisconsin Claims Board?

19 A. Yes.

20 MR. ELSON: Judge, I would move into evidence
21 Plaintiff's Exhibit Number 10, which is the State of Wisconsin
22 Claims Board decision.

23 MR. SMOKOWICZ: Object on relevance grounds, Your
24 Honor.

25 THE COURT: Yeah, what is it?

1 MR. ELSON: This was the subject of a motion in limine
2 which was denied by Your Honor.

3 THE COURT: Okay. The Court will receive it, then.

4 MR. ELSON:

5 Q. Showing you Plaintiff's Exhibit Number 9. This is a portion
6 of the State of Wisconsin Claims Board decision having to do
7 with your petition. That's the first page. And I'm going to
8 show you the second page, which is the substantive part. Is
9 this what you received from the State of Wisconsin Claims Board
10 decision in response to the petition that you filed?

11 A. Yes.

12 Q. And I want to call your attention to the last paragraph
13 which states based on the totality of the information summarized
14 above and presented at the hearing, the Board concludes the
15 claimant has provided clear and convincing evidence that he was
16 innocent of the crime for which he was convicted and did not, by
17 his act or failure to act, contribute to his conviction. Do you
18 see that?

19 A. Yes.

20 Q. How did it make you feel that the State of Wisconsin Claims
21 Board made that decision with regard to your innocence?

22 MR. SMOKOWICZ: Objection. Relevance.

23 THE COURT: Overruled.

24 THE WITNESS: It made me feel good. You know, I could
25 show my kids that -- like this ain't true. This ain't real.

1 Because my son actually was asking his Mom, did Dad really kill
2 that woman?

3 MR. ELSON:

4 Q. That's your son William?

5 A. Yes.

6 Q. When did he ask her that?

7 A. It was sometime during -- when I was locked up. She just
8 had told me he was asking. I was locked up, and she had just
9 told me, you know, Junior asking me.

10 Q. Were you able to show William this Claims Board decision?

11 A. I don't know if I actually showed him this. I showed it
12 to -- most likely I showed it to my daughter, but he had kind of
13 got the gist of it once I was released. Like I spent a lot more
14 time with my other daughter than him and me. He 26. He doing
15 his thing, you know.

16 Q. And I just want to show you the last page of the Claims
17 Board decision. And this contains the signatures of the Board
18 members. Do you see that?

19 A. Yes.

20 Q. Okay. Let's talk a little bit about your adjustment since
21 you've been exonerated and released from prison, and how it's
22 been since you've gotten out. Can you talk to the jury a little
23 bit about that?

24 A. Well, my adjustment back?

25 Q. Did you find it easy to adjust to life on the outside?

1 A. Hard to say. I don't know. I was still coping with this.
2 I don't know, as far as like -- ask that question again, would
3 you?

4 Q. I will ask you a different question. How have your
5 relationships been with your children since you have been
6 released?

7 A. They've been -- you know, they've been kind of strained, you
8 know. Kind of individual. I was out of their lives actually
9 11-and-a-half years concerning this homicide, and it's hard.
10 Them taking advice and stuff from me. They like who is you?
11 You wasn't even here for me. And they grew up thinking like my
12 Dad is a murderer. I mean, you know. So it's been, you know --
13 just been working on it. That's all I can say. Just working on
14 it. Confident that it will be -- as time go on, you know, you
15 know, guess all of it will come out.

16 Q. In terms of your emotional state since all this has
17 happened, do you have any kind of trust issues or paranoia
18 issues that you can tell us about?

19 A. Yeah. This ain't good, being -- I don't -- I don't trust.
20 As far as when it comes to Police? No, I don't trust them.
21 When it comes to my life? My living and my pursuit of
22 happiness? I do not trust them, no.

23 Q. How about your relationships with women? How has this
24 affected that?

25 A. They not really trust -- they look at me like -- they

1 looking at me sideways. Like, you know, my cousin told me you
2 gonna wear that jacket for the rest of my life, regardless of
3 this. We was having a conversation. Got heated and she was
4 like you gonna wear this jacket for the rest of your life, no
5 matter what. Then, you know, it's -- girls are like -- you
6 know, they accept truth like okay, you know. So, no, that
7 wasn't true.

8 Q. Let me ask you about some positive things. What are some of
9 your favorite things to do now that you're out of prison?

10 A. Playing with grandkids.

11 Q. You've been busy with some of your grandkids?

12 A. Yeah, been busy with the grandkids.

13 Q. How many grandkids do you have?

14 A. Got two grandsons right now. Isaiah and King (phonetic).

15 Q. Are you able to spend time with them?

16 A. Yeah. Yeah.

17 Q. What sorts of things do you do?

18 A. Just play with them. Feed them, you know. Buy them
19 something, you know. What Grandfathers do.

20 Q. Let me ask you one last question. Can you tell the jury how
21 it's affected you that you were convicted of this horrible crime
22 that you didn't commit?

23 A. How did it affect me did you say? It wasn't a good
24 experience. I say just being a father, like I say it made it
25 rougher like for relationships, getting jobs, you know. Certain

1 jobs can't get right to this day, having it on my record. It
2 haven't been removed from my record. Like I say, people just
3 look at you different from there, you know. Like being -- they
4 just look at you different.

5 Q. What would you have done with those 6 years of your life had
6 you not been in prison?

7 A. Well, those 6-and-a-half years that I couldn't get back?
8 I'd have been building my life, starting my business. It just
9 finally got done this time. Being with my family. Being
10 married. I would have been married by now.

11 MR. ELSON: I have no further questions, Judge.

12 THE COURT: All right. Cross examination. Well,
13 we'll do this, ladies and gentlemen. We'll break for the day.
14 The first day is always a long day. You've been very patient.
15 Coming back, getting accommodated to the situation here. So
16 we're going to break approximately a half hour early, and we'll
17 start the cross examination -- because I'm sure that will be at
18 least -- somewhat lengthy, I should say. Not as lengthy, maybe,
19 but the Court doesn't know.

20 So you've heard two witnesses -- from two witnesses
21 now. Please don't discuss the case. As we get further into the
22 testimony it always becomes more tempting to do so. Don't do
23 that. I advise you every time you leave the courtroom because
24 that's important.

25 So we'll see you back here tomorrow morning at 9

1 o'clock and we'll take up the cross examination of Mr. Avery by
2 the defense. Okay? Have a good evening. All right.

3 (Whereupon the jury was excused at 4:30 p.m.)

4 THE COURT: Okay. Tomorrow morning at 9 o'clock.

5 MR. SMOKOWICZ: Your Honor, we should update you with
6 respect to Detective Hernandez. It's my understanding that the
7 latest -- well, Miss Yuan, you can speak to that better than I
8 can.

9 MS. YUAN: Yes, Your Honor. I did speak with
10 Detective Kathy Spano, who's been in touch with him. The latest
11 I heard was he was still in the hospital. They were waiting on
12 the test results from this morning. He had additional -- like
13 an additional testing to perform later today. I don't know when
14 he's going to be released. We have already informed Plaintiff's
15 counsel that he's not going to be able to testify tomorrow.
16 We're hoping he's released and can testify on Wednesday, but
17 I'll know more -- I'm going to give him a call once we break
18 from here.

19 THE COURT: Well, if he's in the hospital, he's in the
20 hospital. As soon as he gets out, try to get him here.
21 Anything else?

22 MR. SMOKOWICZ: Not at this point, Your Honor.

23 THE COURT: Okay. See you tomorrow morning at 9
24 o'clock.

25 * * *

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, HEIDI J. TRAPP, Official Court Reporter for the
5 United States District Court, Eastern District of Wisconsin, do
6 hereby certify that I reported the foregoing Transcript of
7 Proceedings; that the same is true and correct as reflected by
8 my original machine shorthand notes taken at said time and place
9 before the Hon. Rudolph T. Randa.

10

11

12 Official Court Reporter
United States District Court

13

14 Dated at Milwaukee, Wisconsin,
15 this 13th day of October, 2015.

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